[fol. 549]

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

No. 12,403

LONG ISLAND LIGHTING COMPANY,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Petitioners,

versus

FEDERAL POWER COMMISSION,
Respondent.

JOINT AND SEVERAL PETITION FOR REVIEW OF DECISION AND ORDER OF THE FEDERAL POWER COMMISSION.

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[fol. 553]

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JOINT AND SEVERAL PETITION FOR REVIEW OF DECISION AND ORDER OF THE FEDERAL POWER COMMISSION.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The joint and several petition of LONG ISLAND LIGHTING COMPANY and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, hereinafter called respectively "Petitioner Long Island" and "Petitioner Public Service", being a petition for review filed pursuant to and in accordance with Acts of Congress hereinafter referred to, for the review of an order of the Federal Power Commission, hereinafter called "Respondent," respectfully shows that:

I.

Petitioner Long Island is a corporation duly organized and existing under the Transportation Corporations Law of the State of New York, having its office and principal

place of business at 250 Old Country Road, Mineola, New York, and being engaged in the business of manufacturing, distributing and selling gas and electricity. Petitioner Long Island distributes and sells gas to approximately 282,000 customers on Long Island in the Counties of Nassau and Suffolk and in a portion of the County of Queens in the State of New York, which area has a population of approximately 1,600,000 persons.

II.

Petitioner Public Service is a public utility duly incorporated and existing under the laws of the State of New Jersey, having its principal and executive offices at 80 Park Place, Newark 1, New Jersey, and being engaged in the manufacture and distribution of gas and electricity. Petitioner Public Service distributes and sells gas to approximately 1,000,000 customers in an area extending from the Hudson River opposite New York City to the Delaware River at Trenton and thence to Camden, New Jersey, which area has a population of approximately 3,400,000 persons.

III.

Petitioner Long Island and Petitioner Public Service each are customers of and purchase a portion of the natural gas which they distribute and sell to consumers in their respective territories from Tennessee Gas Transmission Company and purchase the balance of their respective natural gas requirements from other interstate natural gas pipeline companies which acquire a major part of their natural gas from producers in the Gulf Coast Area from which the natural gas authorized in these proceedings to be sold and delivered to Tennessee Gas Transmission Company will be produced.

IV.

The Federal Power Commission, Respondent, is a Commission created under the laws of the United States and is

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composed of Jerome K. Kuykendall, Chairman, Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline, Commissioners, who are duly appointed, qualified and acting members of said Commission, and that said Commission and the members thereof perform their functions and official duties and have their principal offices at 441 G Street, N. W., in the City of Washington, District of Columbia.

V.

Jurisdiction and Venue.

(a) This Court has jurisdiction of this petition for review under the provisions of the Administrative Procedure Act (5 USC 1009), and more particularly under Section 19(b) of the Natural Gas Act (15 USC 717 r(b), of June 21, 1938, as amended) which provides in part as follows:

> "(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. • • •"

(b) This petition presents to this Court for review an order of the Federal Power Commission, Respondent, issued June 24, 1957, entitled "Order, Upon Application for Rehearing, Adopting Initial Decision of Presiding Examiner with Modifications and Conditions", which order

was issued in the proceedings entitled "In the Matters of Continental Oil Company, Docket No. G-11,024, The Atlantic Refining Company, Docket No. G-11,034, Cities Service Production Company, Docket No. G-11,046, Tidewater Oil Company, Docket No. G-11,049", which proceedings were consolidated and publicly heard as a consolidated proceeding by said Commission Respondent. A true copy of said order of the Commission Respondent issued June 24, 1957, is annexed hereto as Exhibit "A" for all necessary purposes hereof.

(c) By petition to the Respondent dated October 15, 1956 and February 19, 1957 respectively, Petitioner Long Island and Petitioner Public Service asked that they be permitted by Respondent to intervene in and be made parties to the aforesaid consolidated proceedings. The Respondent by its order issued February 27, 1957, permitted the intervention of Petitioner Long Island and Petitioner Public Service in the said proceedings. Thereafter Petitioner Long Island and Petitioner Public Service actively participated as parties in said proceedings by being represented by counsel at public hearings held therein, by filing initial and reply briefs, pleadings and exceptions to the decision of the Respondent's Examiner designated to preside at the public hearings held in said proceedings issued March 29, 1957, and by participating in oral argument before the Commission Respondent.

(d) On July 23, 1957, Petitioner Long Island and Petitioner Public Service each filed with the Respondent an application for rehearing under Section 19(b) of the Natural Gas Act of the Respondent's said order issued June 24, 1957. The said application to the Respondent for rehearing of Petitioner Long Island and the said application for rehearing of Petitioner Public Service are annexed hereto as Exhibit "B" and Exhibit "C", respectively, for all necessary purposes hereof.

(e) By its order issued August 15, 1957 entitled "Order Denying Applications for Rehearing", Respondent denied

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Petitioner Long Island's and Petitioner Public Service's applications for rehearing and amended its said order issued June 24, 1957, in these proceedings; a copy of Respondent's said order denying the applications for rehearing and amending its said order of June 24, 1957 is annexed hereto as Exhibit "D" for all necessary purposes hereof.

(f) The proceedings before the Respondent in the aforementioned Commission Docket Nos. G-11,024, G-11,034, G-11,046 and G-11,049 were initiated by applications filed with the Respondent, pursuant to Section 7 of the Natural Gas Act, by Continental Oil Company on September 5, 1956, The Atlantic Refining Company on September 7, 1956, and Cities Service Production Company and Tidewater Oil Company on September 10, 1956, for certificates of public convenience and necessity authorizing the sale of natural gas from their leases off the coast of the State of Louisiana to Tennessee Gas Transmission Company.

(g) Tennessee Gas Transmission Company is a natural gas company and Respondent by its original order issued on April 22, 1957, entitled "Findings and Order Issuing Temporary Certificates of Public Convenience and Necessity" has found and determined in these proceedings that Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company upon the commencement of the sales of natural gas to Tennessee Gas Transmission Company authorized by Respondent in these proceedings, will each be a natural gas company within the meaning of the Natural Gas Act if they are not already in this status because of other transportation or sales. A copy of Respondent's said order of April 22, 1957 and a copy of the subsequent order of Respondent entitled "Findings and Order Issuing Permanent Certificates of Public Convenience and Necessity and Modifying Previous Order", issued on May 20, 1957, which modified said order of April 22, 1957, are annexed hereto as Exhibits "E" and "F" for all necessary purposes hereof.

(h) Tennessee Gas Transmission Company, Continental Oil Company, Cities Service Production Company and Tidewater Oil Company are each corporations incorporated and existing under the laws of the State of Delaware and The Atlantic Refining Company is a corporation incorporated and existing under the laws of the State of Pennsylvania.

(i) Venue is vested in this Court under Section 19(b) of the Natural Gas Act for the reason that all of the natural gas companies to which the Respondent's orders issued in these proceedings relate, namely, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, Tidewater Oil Company and Tennessee Gas Transmission Company are all located within the jurisdiction of the United States Court of Appeals for the Third Circuit.

(j) Under the provisions of Section 19(a) of the Natural Gas Act (15 USC 717r) and in consequence of the foregoing, Petitioner Long Island and Petitioner Public Service, being parties aggrieved by the said order issued by Respondent in these proceedings on June 24, 1957, as amended by Respondent's order issued August 15, 1957, have the right to obtain a review of said orders in this Court.

VI.

Assignment of Errors.

Petitioner Long Island and Petitioner Public Service state that said order of Respondent issued June 24, 1957 as amended by Respondent's order issued August 15, 1957, is unreasonable, capricious, arbitrary, contrary to law and should be vacated and set aside for the following reasons:

1. The Respondent is in error in holding that the public convenience and necessity require the granting of permanent certificates of convenience and necessity to the producer applicants, Continental Oil Company, The Atlantic

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Refining Company, Cities Service Production Company and Tidewater Oil Company in these proceedings without conditioning the certificates with respect to the initial price of 22.4 cents per Mcf (including one cent per Mcf for the Louisiana gathering tax) that said applicants will receive for the natural gas they propose to sell to Tennessee Gas Transmission Company. The Respondent as a matter of law cannot grant these producer applicants permanent certificates upon a determination based entirely on an unsubstantiated need for additional natural gas by Tennessee's customers. A proper and lawful certificate can only be granted under the Natural Gas Act on a determination based on adequate evidence that the applicants are able and willing to furnish the proposed service, the proposed sales of natural gas to Tennessee are required, *and* that the rates under which the proposed service will be rendered are in the public interest.

2. The Respondent is in error in granting the producer applicants, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company, permanent certificates unconditioned with respect to the initial price because the evidence of record does not contain sufficient evidence on which a proper and necessary legal finding can be made that the public convenience and necessity require the sale of the volumes of natural gas by the said applicants to Tennessee at the initial price of 22.4 cents per Mcf. In these proceedings Respondent itself has twice found that the record contains insufficient evidence or testimony on which Respondent can base a proper, necessary and legal finding that public convenience and necessity requires the sale of the volumes of natural gas by these producer applicants to Tennessee at the particular rate level proposed. In its order of April 22, 1957 (Exhibit "E" annexed hereto) the Respondent Commission said in part:

> "The record contains insufficient evidence or testimony, however, on which to base a finding that the

public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot be easily overemphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.

"These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See Cities Service Gas Co., Signal Oil and Gas Co., 14 F. P. C. opinion No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as Signal Oil and Gas Co. *v.* F. P. C., 238 F. 2d 771 (CA3), certiorari denied, 353 U. S. 923. * * * "

Again in its May 20, 1957 order (Exhibit "F" annexed hereto) in referring to the initial price the Respondent said:

"* * * As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. * * * "

No further evidence or testimony was supplied or introduced after the issuance of Respondent's said orders of April 22, 1957, and May 20, 1957. Absent sufficient evidence on which Respondent can base a finding that the public convenience and necessity requires the sale of the proposed volumes of gas by the said producer applicants to Tennessee Gas Transmission Company at the proposed initial rate, Respondent is in error in concluding that it can law-

fully determine that the proposed sales are in the public interest and that it can lawfully grant permanent certificates of public convenience and necessity to the said producer applicants as it has done by the issuance of its said order of June 24, 1957.

3. The Respondent is in error in finding and concluding, as it does that by its said order of June 24, 1957, Petitioner Long Island and Petitioner Public Service and their respective consumers are afforded the protection against unreasonable initial prices in the manner required by the Natural Gas Act by postponing any decision as to whether the said producer applicants' initial rates are reasonable and required in the public interest to subsequent rate proceedings initiated by Respondent or others under Section 5(a) of the Natural Gas Act. Postponement of a determination of the justness and reasonableness of the initial rates of the said producer applicants in these proceedings to subsequent rate proceedings brought under Section 5(a) of the Natural Gas Act does not provide Petitioner Long Island and Petitioner Public Service and their consumers the protection against unjust and unreasonable initial rates that the Natural Gas Act requires for the following reasons:

(a) The said producer applicants' rate schedules containing the initial price of 22.4 cents per Mcf will not be filed with Respondent until shortly before deliveries of the natural gas are made to Tennessee. After such filings are made the Section 5(a) rate investigations ordered by Respondent in its June 24, 1957 order will begin. After the investigations of Respondent are completed, public hearings will be held and the Respondent's customary procedural processes will be followed, resulting after a considerable time in an order of Respondent with respect to the said producer applicants' initial rates. As Respondent's order in the Section 5(a) rate proceedings would speak only prospectively and not retroactively with respect to the initial rates, the untested initial rates would be in effect

from the time when deliveries of the natural gas by the said producer applicants to Tennessee Gas Transmission Company commenced until the date of the Respondent's order in the Section 5(a) proceedings. Should Respondent eventually determine that the said producer applicants' initial rates were in fact unjust and unreasonable and order them reduced, the said producer applicants in these proceedings would not be required to make any refunds on deliveries of natural gas made to Tennessee Gas Transmission Company at the initial rate up to the date of the Respondent's order. Such procedure permits the producer applicants in these proceedings to be paid an initial rate for their gas delivered to Tennessee Gas Transmission Company which initial rate the Respondent may subsequently determine is unjust and unreasonable.

(b) The Section 5(a) rate procedure that the said producer applicants have demanded and the Respondent in error has acceded to in these proceedings would place the burden on the Respondent to establish that the initial rate was higher than a just and reasonable rate and relieve the said producer applicants of the proper, necessary and legal burden of establishing in the certificate proceedings under Section 7 of the Natural Gas Act that the public interest and public convenience and necessity required the proposed service at the proposed initial price level. The burden of establishing in a certificate proceeding that the public convenience and necessity require the proposed service at a particular price level is, under the Natural Gas Act on the person seeking to take advantage of the proposed service and not on the tribunal before which the case is to be made.

(c) The Respondent itself in the Cities Service-Signal Oil and Gas Company proceedings by its opinion and order No. 288 issued therein has referred to the weaknesses and inadequate protection afforded by postponing consideration of the initial price issue in producer certificate proceedings to subsequent Section 5(a) rate proceedings under the Nat-

ural Gas Act. In its said Opinion No. 288 Respondent correctly held that the applicant-seller had the burden in a certificate case of proving all elements of its application so that the Respondent could conclude that the proposed service was in the public interest and required by the present and future public convenience and necessity. In its said Opinion No. 288 the Respondent clearly and correctly stated that a vital element of such proof in a certificate proceeding is concerned with the rates proposed.

By its said order of June 24, 1957, in these proceedings Respondent has repudiated its doctrine of the Cities Service-Signal Oil and Gas Company case which has been sustained by this Court and denied Petitioner Long Island and Petitioner Public Service and their respective consumers the full and adequate protection against unjust and unreasonable initial rates that the Natural Gas Act provides and requires.

The failure of the Respondent to exercise its power to condition the permanent certificates with respect to the initial price under all the facts and circumstances of this case was arbitrary, capricious and amounts to an abuse of its administrative discretion.

(d) In its said order of May 20, 1957 (Exhibit "F" annexed hereto), the Respondent refers to another reason why a 5(a) review of the initial prices may not afford Tennessee's customers and their consumers full protection against an unjust and unreasonable initial price. The Respondent in its May 20th order stated:

> "• • • Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us. • • •"

While the Respondent in this proceeding must proceed under the existing law, the Respondent is not to be pre-

sumed to be unaware of the effect of a proposed bill now before Congress.

By its said May 20th order the Respondent provided an effective procedure that was fair and equitable to all parties, and provided adequate protection to Tennessee's customers and their consumers, both under the present law and under the proposed Harris Bill (H. R. 8525—85th Congress, 1st Session) if enacted. With respect hereto reference is made to paragraphs 5, 6 and 7 of the Respondent's order of May 20, 1957 (Exhibit "F" annexed hereto).

In the event of the enactment of the so-called Harris Bill, the Respondent by its order of June 24, 1957 and the 5(a) procedure provided therein, has removed the protection against this very contingency that concerned the Respondent as indicated by the above quotation from its said May 20th order.

(e) In these proceedings the said producer applicants have represented to the Respondent that they could not present sufficient evidence in justification of the initial rate within any reasonable period of time in the future. If the producer applicants themselves are faced with this difficulty, certainly the Respondent and these Petitioners would be faced with even greater difficulty, to the detriment of the ultimate consumers of the natural gas and an unlawful windfall to the said producer applicants will result.

4. The Respondent is in error in finding and concluding that Tennessee Gas Transmission Company's customers are shown by the record in these proceedings to be so sorely in need of additional natural gas, that regardless of the initial price the proposed sales by the said producer applicants to Tennessee Gas Transmission Company should be authorized and permanent certificates of public convenience and necessity issued. The record in these proceedings does not contain competent, material, and relevant evidence which supports the finding of the Respondent that

the public served through the Tennessee system is greatly in need of increased supplies of natural gas.

5. The Respondent is in error in abandoning the position it took in its previous orders of April 22, 1957, and May 20, 1957, by issuing its said order of June 24, 1957, in the face of threats by the said producer applicants in these proceedings to cancel their contracts with Tennessee Gas Transmission Company and withdraw their gas from the interstate market unless Respondent issued permanent certificates of public convenience and necessity only on the terms demanded by the said producer applicants themselves. The action of June 24, 1957, taken in the face of threats by producer applicants to cancel their contracts and without any substantial evidence in the record that the loss of this quantity of gas would so imperil Tennessee Gas Transmission Company's gas reserves that Tennessee would be unable to render proper service, thus warranting the granting of these certificates regardless of price, was unlawful, arbitrary, capricious, amounted to an abuse of Respondent's administrative discretion, and deprived Petitioners and their consumers of the protection afforded by the Natural Gas Act.

6. The Respondent is in error by issuing its order of June 24, 1957, granting permanent certificates of public convenience and necessity to the said producer applicants without a determination that the initial price was in the public interest and required by the public convenience and necessity. Respondent thereby has set a new "highest price level" for gas produced in the Gulf Coast area of Louisiana which Tennessee Gas Transmission Company and Petitioners' other pipe line suppliers will be required to pay for additional gas purchased from producers in this area.

7. The Respondent erred in not exercising its power to impose a rate condition in view of the evidence of record

which clearly shows that there was a complete absence of competition among the four producer applicants.

8. The Respondent erred in issuing the certificates of public convenience and necessity because the applicants failed to prove by competent evidence that they are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission Respondent.

9. The Respondent erred in not imposing a rate condition because the actual price which Tennessee will be obligated to pay cannot be determined from the evidence.

VII.

All of the foregoing objections to the said order of Respondent issued June 24, 1957, were set forth and urged by Petitioners before the Commission in their applications for rehearing referred to herein and annexed hereto as Exhibits "B" and "C" respectively.

VIII.

Relief Prayed.

WHEREFORE, Petitioners respectfully pray that this Court:

1. Serve a copy of this petition upon any member of the Respondent, Federal Power Commission, pursuant to the provisions of Section 19(b) of the Natural Gas Act (15 USC Section 717r(b)).

2. Require said Respondent to certify and file with this Court a transcript of the record upon which the Respondent's order issued June 24, 1957, was entered.

3. Review the order issued June 24, 1957, by the Respondent, Federal Power Commission, as modified by the order issued August 15, 1957, and enter a judgment vacating and setting said order aside.

4. Grant such other and further relief as the rights of Petitioners and the equities may render appropriate in the premises.

Respectfully submitted,

David K. Kadane,
Edward M. Barrett,
Attorneys for Long Island
Lighting Company,
250 Old Country Road,
Mineola, New York.

Edward S. Kirby,
Attorney for Public Service Electric
and Gas Company,
80 Park Place,
Newark, New Jersey.

Dated: October 11, 1957.

Affidavit of Edward S. Kirby.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.:

BEFORE ME, the undersigned Notary Public in and for the above named County and State, personally came and appeared EDWARD S. KIRBY, who, being duly sworn, deposes and says:

That the allegations of fact set forth in the foregoing joint and several petition for review are true and correct and that the Exhibits attached to said joint and several petition are true copies of the originals of the orders or other papers which comprise said Exhibits.

.....
(EDWARD S. KIRBY)

Sworn and subscribed to before me
this 10th day of October, 1957.

MURIEL I. YOBS,
Notary Public of New Jersey,
My Commission Expires September 8, 1959.

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Affidavit of Edward M. Barrett.

STATE OF NEW YORK, }
COUNTY OF KINGS. } ss.:

BEFORE ME, the undersigned Notary Public in and for the above named County and State, personally came and appeared EDWARD M. BARRETT, who, being duly sworn, deposes and says:

That the allegations of fact set forth in the foregoing joint and several petition for review are true and correct and that the Exhibits attached to said joint and several petition are true copies of the originals of the orders or other papers which comprise said Exhibits.

.....
(EDWARD M. BARRETT)

Sworn and subscribed to before me }
this 10th day of October, 1957. }

JOHN A. QUINN,
Notary Public State of New York,
No. 43-3185700,
Commission Expires March 30, 1959.

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Exhibit "A".

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners:

Frederick Stueck, Acting Chairman; Seaborn L. Digby, William R. Connole and Arthur Kline.

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

ORDER, UPON APPLICATION FOR REHEARING, ADOPTING INITIAL DECISION OF PRESIDING EXAMINER WITH MODIFICATIONS AND CONDITIONS.

(Issued June 24, 1957.)

On June 4, 1957, Tennessee Gas Transmission Company (Tennessee Gas) filed an application for rehearing and reconsideration of the Commission's order issued in these proceedings on May 20, 1957. By order issued June 6, 1957, we granted rehearing and in such order provided for oral argument "upon the contentions made and issues presented by the application for rehearing, the motion for modifica-

tion and the answers thereto heretofore filed in these proceedings.'"[1]

Pursuant to the order granting rehearing we heard oral argument on June 12, 1957.

The Commission's order issued May 20, 1957, modified an earlier order issued April 22, 1957, granting temporary certificates of public convenience and necessity to CATCO and to Tennessee Gas in Docket No. G-11107.

The temporary certificates issued by our order of April 22, 1957, authorized CATCO to sell natural gas to Tennessee Gas from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, and authorized Tennessee Gas to construct and operate approximately 107 miles of pipeline from the offshore platforms of CATCO to a point on its main system at Kinder, Louisiana.

The contracts for the sale of gas executed between each of the CATCO companies and Tennessee Gas which are exhibits in these proceedings provide for an initial price of 21.4 cents per Mcf[2] and for a definitely fixed price escalation of two cents per Mcf every four years.

As has been indicated hereinbefore, the CATCO companies filed a motion for modification of the Commission's

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[1] On May 6, 1957, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company (collectively referred to as CATCO) filed a motion for modification of the Commission's order issued April 22, 1957, granting temporary certificates of public convenience and necessity to CATCO and Tennessee Gas and directing that the proceedings "be remanded to the presiding examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by CATCO to Tennessee Gas to be made if these CATCO companies are granted permanent certificates of public convenience and necessity." Answers to the motion were filed by New York Public Service Commission, Lake Shore Pipe Line Company, Brooklyn Union Gas Company and Long Island Lighting Company (jointly), and Public Service Electric and Gas Company (collectively referred to as Interveners) opposing the motion. Tennessee Gas filed an answer supporting the motion.

[2] Reimbursement for the one-cent Louisiana gathering tax would be added to this amount.

order issued April 22, 1957. In the motion the CATCO companies indicated that they were unwilling to accept temporary certificates of public convenience and necessity under the conditions specified in the Commission's order. They, however, proposed that the Commission issue permanent certificates permitting them to charge the initial agreed-upon price of 21.4 cents per Mcf, but agreed to modify therein respective contracts for the sale of natural gas to Tennessee Gas in such manner that the future price escalations contained in the contracts would remain subject to the Commission's scrutiny and jurisdiction in the event the Harris Bill, H. R. 6790, 85th Cong., were enacted into law. The proposed contract amendments would provide that if the Harris Bill were enacted, the price for gas would escalate up to the then current reasonable market price but not more than two cents per Mcf every four years.

In response to the motion we issued our May 20, 1957, order in which we granted permanent certificates of public convenience and necessity to the CATCO companies on condition that the contracts between the CATCO companies and Tennessee Gas be amended so as to provide for an initial price of 17 cents per Mcf, with provision for filing a request for an increase in such price to 21.4 cents per Mcf one day after the initial price became effective. Under the condition provision was also made for the incorporation in such contract of indefinite price escalations, with a ceiling increasing by two cents every four years.

In its application for rehearing filed June 4, 1957, Tennessee Gas has stated that it had been advised that the CATCO companies were unwilling to accept the permanent certificates of public convenience and necessity granted by the May 20, 1957, order because they objected to the pricing and other conditions specified in the order, and that they would terminate the contracts so that the large supply of gas contained in the off-shore reserves of the CATCO com-

panies would not become available to the customers of Tennessee Gas. At the oral argument it became apparent that the CATCO companies objected to the 17-cent initial price set in the May 20, 1957, order. On the other hand, the CATCO companies indicated that they would still be willing to amend their contracts as proposed in their motion of May 6, 1957. They indicated further that if they failed to obtain certificates without price conditions which they considered objectionable, they would seek to dispose of their gas elsewhere than to Tennessee Gas and the interstate market.

In the present status of the case we are left with the difficult problem of how to assure the delivery of this gas to the large market served by Tennessee Gas, and at the same time protect the consumers from an unreasonably high price. In reaching a solution to this problem we are moved by the primary consideration that the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas. Further, it appears to us, important as is the issue of price, that as far as the public is concerned, the precise charge that is made initially is less important than the assurance of this great supply of gas. In view of these circumstances and the fact that the record does not show that the 21.4-cent rate is necessarily excessive, we agree with the presiding examiner that this certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). We are of the opinion that, in the circumstances of this case, in view of the great demand for gas by customers of Tennessee Gas, the price consideration should not be made the prime determinant of what the public convenience and necessity require. By virtue of the authority conferred upon us by Sections 4 and 5 of the Natural Gas Act and the proposal to modify the contracts made by the CATCO companies, we are of the opinion that we will be

able to adequately protect the public interest with respect to the matter of price. In order, therefore, to insure that deliveries of gas by the four CATCO companies to Tennessee Gas will commence as promptly as possible, we will grant permanent certificates to them by this order without any condition affecting the initial price of 21.4 cents per Mcf.

However, because the 21.4-cent price, as we have heretofore observed, is higher than Tennessee Gas is paying under any other contract, it should be subject to prompt investigation under Section 5 (a) as to its reasonableness. In this connection, we may note that when three of the CATCO companies, Continental Oil, Atlantic Refining and Tidewater Oil file their contracts with Tennessee Gas as rate schedules as required by the Natural Gas Act and our Regulations, such contracts will be subject to rate investigations now outstanding against these companies. Thus, by our order issued January 27, 1956, in Docket Nos. G-9283 and G-9284, we instituted an investigation of any of the rates or charges of Atlantic Refining and Tidewater Oil with respect to any transportation or sale of natural gas subject to our jurisdiction, and by our order issued the same day in Docket No. G-9279, we instituted a similar investigation of the rates and charges of Continental Oil. Concurrently with this order we are instituting in Docket No. G-12780 an investigation of the rates and charges of Cities Service. By this means relief can be afforded to the consuming public if it should be found that the 21.4-cent initial rate to be charged for the off-shore gas is excessive.

It appears to be true that if the Harris Bill, H. R. 6790, 85th Congress, or some bill similar to it, becomes law and that we may lose continuing supervision over the future increased prices provided in the several contracts between the CATCO companies and Tennessee Gas. Therefore, we shall adopt the proposal of the companies made in their

motion for modification of May 6, 1957, that they amend their contracts so that the price increases will remain subject to our control by using "indefinite pricing clauses" rather than "definite pricing clauses" within the meaning of the Harris Bill. They propose to do this, as indicated above, by providing that the initial sales price shall be 21.4 cents per Mcf until November 1, 1962, as at present, but after that the "reasonable market price" within the meaning of the bill and as determined by this Commission shall prevail. Adjustments would be initiated by the sellers at four-year intervals but would be limited by the step increases now provided in the contracts. The CATCO companies state that Tennessee Gas is agreeable to this arrangement and will enter into such an amendment with each of the CATCO companies.

The Commission finds:

(1) It is necessary and appropriate in the public interest to adopt the initial decision of the presiding examiner with modifications and conditions and to modify the Commission's order issued May 20, 1957, in the above-entitled proceedings, in the manner set forth below.

(2) The CATCO companies are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules, and regulations of the Commission thereunder.

(3) The sales of natural gas by the CATCO companies to Tennessee Gas, as referred to above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

[fol. 577] 25

Exhibit "A".

The Commission orders:

(A) Permanent certificates of public convenience and necessity are hereby issued to the CATCO companies, without further hearing, authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding.

(B) Each of the CATCO companies, within 20 days after the issuance of this order, shall file with the Commission a duly executed amendment to the contract submitted as an exhibit to its certificate application providing for sale of natural gas to Tennessee Gas embodying the following language:

> If and in the event that H. R. 6790 or any substantially similar legislation is enacted into law by the 85th Congress, and becomes effective, then the provisions of Section 10, *Prices,* commencing with the portion thereof reading
> "From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962.....21.4 Cents per MCF"
> to and including that portion thereof reading
> "From November 1, 1986 to expiration of this contract .....35.4 Cents per MCF"
> is hereby deleted, and the following is substituted in lieu thereof:
> From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter .....21.4 Cents per MCF
> Provided that, after November 1, 1962, Seller shall

be entitled to receive and Buyer shall pay the reasonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall be not less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF.....From November 1, 1962 to November 1, 1966

25.4 Cents per MCF.....From November 1, 1966 to November 1, 1970

27.4 Cents per MCF.....From November 1, 1970 to November 1, 1974

29.4 Cents per MCF.....From November 1, 1974 to November 1, 1978;

and in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF.....From November 1, 1978 to November 1, 1982

33.4 Cents per MCF.....From November 1, 1982 to November 1, 1986

[fol. 579] 27

Exhibit "A".

35.4 Cents per MCF ..... From November 1, 1986 to the expiration of this contract.

Except as altered hereinabove, the provisions of Section 10, *Prices,* shall remain unaffected and in full force and effect.

(C) The certificates issued herein shall be accepted in writing and under oath by each of the CATCO parties, each of whom shall be authorized to commence service upon acceptance and upon completion of construction of the "offshore facilities" by Tennessee Gas. Each acceptance shall be accompanied by a resolution of the Board of Directors of the accepting company duly authenticated indicating the approval of the acceptance of the certificates hereby granted.

(D) The certificates issued herein are not transferable and shall be effective only so long as each CATCO company continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the CATCO companies. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

Exhibit "A".

(F) The findings of fact and the conclusions of the presiding examiner are hereby adopted except where inconsistent with this order.

(G) Our order issued May 20, 1957, is hereby modified to the extent that it is inconsistent with this order.

By the Commission. Commissioner Connole dissenting.

J. H. Gutride,
Joseph H. Gutride,
Secretary.

In the Matters of Continental Oil Company, *et al.*	Docket No. G-11,024, *et al.*

(Issued June 24, 1957.)

Connole, Commissioner, *dissenting:*

The manifest unwillingness of the producers here involved to submit to properly constituted public authority the prices at which they propose to make these significant sales in interstate commerce has precipitated a crisis for consumers and Commission far out of proportion to the importance of the immediate proceeding. The depth of the crisis was well expressed at the oral argument of June 12, 1957. Producers represented that unless we abandoned our position in this matter it would be their decision to withdraw this gas from the interstate market. Representatives of consuming interests and of metropolitan distributing companies contended it would be preferable to risk curtail-

ment of expansion and, by necessary implication, certainty of supply rather than to permit the Commission to depart from the position taken in our prior Orders in this docket.

This proceeding is another example of the manner in which the skyrocketing demand for natural gas is severely straining the industry's price structure. Demand threatens to elevate price levels beyond customer tolerance. As a result each proposed sale at new high price levels must be evaluated with particular care. Avoiding the disastrous consequences of a collision between consumers' needs for additional gas and producers' demands for additional compensation is particularly difficult in this proceeding because producers have presented the Commission with an almost classic Hobson's choice. In addition, the issues have become expanded in scope and effect until far more than the initial price level of this particular sale is involved. As I see it, the validity of the Commission's judicially approved right to attach a rate condition to certificates of public convenience and necessity when it is called for, and in fact, the very inviolability of all Commission orders is at issue here.

It is clear from the history of this proceeding that we have made unprecedented efforts to ensure fair treatment, that we have clearly evidenced our intention to cooperate in arriving at an initial price level that would be just and reasonable to all parties affected. Despite these efforts, however, the producers remain adamant. Despite ample administrative and judicial authority to the contrary[1] they insist that a proposal to make a sale of natural gas in interstate commerce is not subject to regulatory review to determine if the public interest requires that it be made at the prices proposed.

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[1] See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. Opinion No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F. P. C.*, 238 F. 2d 771 (CA3), *certiorari* denied 353 U. S. 923.

Exhibit "A".

The record is plain that the controlling reason the parties refuse to submit their contracts to regulatory review in the manner found to be necessary in the public interest is their preference for a proceeding in which the burden would be on the Commission to establish that the rate was more than reasonable. They flatly refuse to submit to one in which the parties would be required to show only that the rate was required by the public convenience and necessity. No citation of authority or reference to regulatory theory is needed to demonstrate that the burden of showing the public convenience and necessity requires a proposed service at a particular price level is on the party seeking to take advantage of the proposed service and not on the tribunal before which the case is to be made. Under the unique conditions found here, the critical importance of that decision is indisputable.

So much has been said in other forums, so many and so unanimous are the authorities in support of it, that to argue the validity and equity of the procedure contemplated by our prior Orders and supported by the *Signal Oil* case, *supra*, would serve no useful purpose now. At this tardy date the unbeliever needs inspiration, not persuasion, if the veil of obstinacy is to be removed from his eyes.

Of more immediate consequence, however, is the dilemma into which the refusal has placed this Commission and the consumers whose interest we must protect: Denial of essential supplies on the one hand, and on the other, inadequate protection against unjust and unreasonable rates.

It contributes nothing to argue that the issue here is sanctity of contract. When it applies, no one feels the force of that argument more keenly than I. And when it was threatened, I spoke out against it. For example, see my separate statement *In the Matters of American Louisana*

[fol. 583] 31

Exhibit "A".

Pipe Line Company, et al., G-10396, *et al.*, issued January 11, 1957.

But no contract terms are involved here. No party questions the manner in which the other has carried out its part of a bargain. If anything, an essential party to the contracts has been crowded out of the bargaining table. And rather than to permit the public interest a place, the bargainers would turn the table upside down and walk away from the entire proceeding.

Plain facts are that the gas has been placed on the interstate market on one set of terms and one only. This Commission and the consumers who have made irrecoverable investments in order to use it, are given no choice but to accept. The arbitrary nature of this position appears from an examination of the orders which have been rejected by the producers.

No voice has been raised to dispute the facts that were set out so clearly in our Order of April 22, 1957. To my legal understanding, they are still facts. A few sentences will illustrate (page 2, mimeo):

> "The record contains insufficient evidence or testimony however, on which to base a finding that public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be over-emphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> "These factors make it abundantly evident that, in the public interest, this crucial sale should not be

permanently certificated unless the rate level has been shown to be in the public interest. * * *"

No effective objection has been made to our Order of May 20, 1957. The upper limit of the price range used by the Commission in that Order was set by the contracts themselves which the record discloses contain the highest of at least four bid prices. The lower limit was urged by disinterested public authority intervenors and supported by evidence of record showing, among other things, that it was the highest price presently being paid by Tennessee Gas for the purchase of any gas produced in the Southwest area. Effectively, the Order provided a floor which the rates would not penetrate, an assurance notably lacking in the Section 5(a) procedure so zealously embraced by the applicants. And still the refusal persists.

Nothing but threats by the producers supports the proposition that this gas would be barred forever from the interstate market. And the very quantity of offshore gas affected by this decision makes it clear that the only practical market for gas of this kind for years to come is to the large consuming areas served by the long haul interstate pipelines. In my judgment the pricing pattern should not be set for so crucial a supply source in an atmosphere charged with urgency and in response to arguments whose primary motivation is private, not public, gain. The election by the producers to reject their public responsibility and insist on exercising the full strength of their bargaining position has altered completely the impact of logical and equitable arguments.

The decision of the majority is justifiable only by the evil consequences of the loss of these reserves to the particular pipeline which is a party to the contracts. Such evils would, in the opinion of the majority, exceed the gain to follow from the proof that the public convenience and

[fol. 585]

Exhibit "A".

necessity does not require the sale of this gas at proposed rates.

In my opinion, the consequences of abandoning our position will be more serious than their effect on this particular sale. Whether by design or accident, the issues in this proceeding now transcend the close limits of the original hearing. At stake is the question whether the Commission should hold a position which it has determined is in the long run public interest, or whether it should abandon it when confronted with allegations that short run injury to one segment of the industry and consumers might result. Where the issue is reduced to this simple statement, the answer is clear.

Majority quite properly are concerned that persisting in either our April 22 or our May 20 Order will result in cancellation of the CATCO-Tennessee contracts. I agree it probably would. And quite understandably the majority refuses to permit a few distributing companies and one Public Service Commission to dictate the interests of all other consumers on Tennessee's lines. Unfortunately, however, there is more to this issue.

As concerned as I am for Tennessee's customers, I am more concerned for the whole body of consumers on *all* transmission pipe lines for whose protection we are responsible. And as deserving of preservation as I believe those particular Orders to be, I believe the principle that Federal Regulatory Orders should not be changed by threats of abandoning public responsibility is even more important.

On balance, and in view of the expansion of the issues beyond those originally contemplated by this docket, I believe it more important to the public interest to preserve the Commission's authority to make lawful and necessary orders than it is to preserve these contracts as written. The right to maintain valid orders against allegations of

urgency, the importance to the consumer of the *Signal Oil* doctrine, and the right of *all* consumers for protection against unreasonable initial rates outweigh the potential damage to the consumers of Tennessee Gas Transmission which might flow from maintaining the position I urge here.

While dissenting may appear to serve no useful purpose, the damage to consumer and to the public interest, to the regulatory process, and to the future of the interstate natural gas business as it is given me to discern it, would be such under the majority decision that, inevitable as that decision may appear to be, I am left no choice but to protest it by filing a dissenting vote.

I dissent from the action of the majority in this cause.

.....

William R. Connole, Commissioner

[fol. 587] 35

Exhibit "B".

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

APPLICATION OF THE LONG ISLAND LIGHTING COMPANY FOR REHEARING.

The Long Island Lighting Company (Long Island), pursuant to the provisions of Section 19(a) of the Natural Gas Act and the Commission's Rules of Practice and Procedure, hereby makes application for rehearing of the Commission's Findings and Order issued June 24, 1957, in the above entitled proceedings.

In support of its said Application Long Island shows the following:

I.

The Long Island Lighting Company supplies gas service to approximately 300,000 customers within a territory consisting of the former Fifth Ward of the Borough of Queens, New York City, and the Counties of Nassau and Suffolk on Long Island in New York State.

Long Island is a customer of Tennessee Gas Transmission Company and obtains a portion of its natural gas supply from Tennessee as authorized by this Commission.

Exhibit "B",

III.

Long Island as a customer of Tennessee is vitally interested in the effect on Tennessee's rates of the gas purchases Tennessee proposes to make from the applicants in this proceeding at the prices and contract conditions set forth in Tennessee's contracts with these applicants. As Long Island obtains the balance of its natural gas not obtained from Tennessee from another pipeline supplier which purchases gas to supply its customers in the same Gulf Coast area of Louisiana as Tennessee, Long Island is also concerned with the effect that the high prices Tennessee proposes to pay these applicants will have on the price of additional pipeline purchases of gas in the Gulf Coast area.

IV.

By order issued by this Commission on February 27, 1957, Long Island was allowed to intervene in this proceeding and did actively participate in the entire proceeding by being represented at the hearings, by filing an initial and reply brief, by filing exceptions to the Examiner's decision and an answer to applicants' motions to modify the Commission's original order issued April 22, 1957, and by being represented by counsel at the oral argument before the Commission on June 12, 1957.

V.

The Commission in modifying its order issued May 20, 1957, by the issuance of its order of June 24, 1957, is in error.

The basic issue in a certificate proceeding is whether the proposed service is in the public interest. The courts have held repeatedly that the primary purpose of the Natural Gas Act is the protection of consumers. This basic

purpose of the Act cannot be fulfilled in producer certificate cases unless the Commission, in determining whether the proposed service is in the public interest, considers not only the need for the additional gas to be supplied, but also the effect of the proposed service on the pipeline's rates.

This Commission in a producer certificate proceeding cannot lawfully grant permanent certificates to the producer applicants unless the rate level at which the proposed service is to be rendered has been shown by competent evidence to be in the public interest.

In this proceeding this Commission itself has twice found that the record contains insufficient evidence or testimony on which the Commission can base a finding that public convenience and necessity requires the sale of the volumes of gas by the producer applicants herein at the particular rate level here proposed.

In its order of April 22, 1957, the Commission said in part:

> "'The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certifying this sale cannot easily be overemphasized. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. , opinion No. 288, Nos. G-2569, G-2570, No-

vember 28, 1955, affirmed as Signal Oil and Gas Co. *v.* F. P. C., 238 F. 2d 771 (CA 3), certiorari denied, 353 U. S. 923. * * *"

Again in its May 20, 1957 order in referring to the proposed initial price of 21.4 cents per M. C. F. plus one cent Louisiana gathering tax, this Commission said:

> "As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level."

Absent sufficient evidence on which the Commission can base a finding that the public convenience and necessity requires the sale of the gas by these applicants at the proposed rates, this Commission cannot lawfully determine that the proposed service is in the public interest and grant permanent certificates of public convenience and necessity to the producer applicants as it has done by its June 24, 1957 order.

The Commission is in error in finding and concluding in its order of June 24, 1957 as follows:

> "In the present status of the case we are left with the difficult problem of how to assure the delivery of this gas to the large market served by Tennessee Gas, and at the same time protect the consumers from an unreasonably high price. In reaching a solution to this problem we are moved by the primary consideration that the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas. Further, it appears to us, important as is the issue of price, that as far as the public is concerned, the predise charge that is made initially is less important than the assurance of this great supply of gas. In view of these circumstances

and the fact that the record does not show that the 21.4 cent rate is necessarily excessive, we agree with the presiding examiner that this certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). We are of the opinion that, in the circumstances of this case, in view of the great demand for gas by customers of Tennessee Gas, the price considerations should not be made the prime determinant of what the public convenience and necessity require. * * *"

The Commission as a matter of law cannot grant these producer applicants permanent certificates upon a determination based entirely on a claimed need for additional natural gas by Tennessee's customers. A proper and lawful certificate can only be granted under the Natural Gas Act on a determination based on adequate evidence that the applicants are able and willing to furnish the proposed service, the proposed sales of natural gas to Tennessee are required, *and* that the rates under which the proposed service will be rendered are in the public interest. The Commission cannot, as it has done by its order of June 24, 1957, ignore or postpone its determination of the issue of the proposed price and grant these applicants permanent certificate solely upon a showing that the applicants are able and willing to provide the proposed service and a need for the gas by Tennessee's customers, particularly where, as in this instance, the Commission itself has twice found that the record does not contain sufficient evidence upon which the Commission can determine that the rate level at which the proposed service is to be rendered is in the public interest and required by the public convenience and necessity.

Exhibit "B".

VII.

The Commission is in error in abandoning the position it has taken in its previous orders of April 22, 1957 and May 20, 1957, in the face of the threats of these producer applicants to cancel their contracts with Tennessee and withdraw this gas from the interstate market unless the Commission certificates the service only on the terms demanded by these applicants themselves.

The inevitable result of the Commission's decision is obvious and far reaching. Producer applicants will, under threats to cancel their contracts with pipelines, as these producer applicants have done, demand and set higher and higher initial prices for their gas. On records barren of any evidence upon which a proper determination can be made that the initial price is reasonable and in the public interest, producers will demand the issuance of permanent certificates on their own terms. Always it will be claimed that the need for the additional gas outweighs any consideration of the initial price.

The position taken by the Commission in this proceeding by its June 24th order with respect to its refusal to consider in the certificate proceeding the initial price to be paid these applicants is not only unsound but unlawful in in that it does not provide Tennessee's customers and their consumers with the protection against unreasonable initial prices that is required by the Natural Gas Act.

VIII.

The Commission is in error in assuming as it does by its June 24, 1957 order, that by postponing any decision as to whether the applicants' initial rates are reasonable and in the public interest to the subsequent 5(a) proceedings that it has ordered, Tennessee's customers and their consumers are protected in the manner required by the Natural Gas Act.

[fol. 593] 41

Exhibit "B".

Presumably applicants' rate schedules for the proposed service will not be filed until shortly before their deliveries to Tennessee actually commence in November. At that time the 5(a) investigations which the Commission has ordered will begin. After these investigations are completed, hearings will be held and the Commission's customary procedural process followed resulting finally in a Commission order with respect to the applicants' initial rates. All of this would take time.

As the Commission's order in a 5(a) proceeding with respect to rates speaks only prospectively and not retroactively, the untested initial rates would be in effect from the time when deliveries of gas commenced until the date of the Commission's order. Should the Commission eventually determine that the applicants' initial rates were in fact unjust and unreasonable and order them reduced, the applicants would not be required to make any refunds on deliveries made at the initial contract prices up to the date of the Commission's order. In practical effect this imposes all of the burden of any regulatory lag on the customers of Tennessee and permits the applicants to be paid a rate for their gas delivered to Tennessee which rate the Commission may subsequently determine is unjust and unreasonable.

Furthermore, as Commissioner Connole states in his dissent, the controlling reason why these applicants have demanded the 5(a) procedure ordered by the Commission is their desire to have the burden placed on the Commission or complainants to establish that the applicants' initial rates are more than reasonable, instead of themselves having the burden of establishing that the proposed initial rates are reasonable and in the public interest as the procedure specified in the Commission's order of May 20, 1957, would require.

The Commission itself in the Cities Service-Signal Oil and Gas Co. proceeding by its opinion No. 288 has recognized these weaknesses of the postponing consideration of

the initial price issue in producer certificate proceedings to subsequent 5(a) proceedings. In that opinion the Commission held that the applicant-seller had the burden in a certificate case of proving all elements of its application so that the Commission could conclude that the proposed service was in the public interest and required by the present and future public convenience and necessity. At page 19 of its Opinion No. 288 the Commission clearly stated that a vital element of such proof in a certificate case is concerned with the rates proposed.

By its order of June 24, 1957 the Commission has repudiated its doctrine of the *Signal Oil* case which has been sustained by the courts and denied Tennessee's customers and their consumers the full and adequate protection against unjust and unreasonable initial rates that the Natural Gas Act provides.

In its order of May 20, 1957 the Commission refers to another reason why a 5(a) review of the initial prices may not afford Tennessee's customers and their consumers full protection against an unjust and unreasonable initial price. The Commission in its May 20th order stated:

> "Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us."

While the Commission in this proceeding must proceed under the existing law, the Commission is not to be presumed to be unaware of the effect of a proposed bill now before Congress.

By its May 20th order the Commission provided an effective procedure that was fair and equitable to all parties, and provided adequate protection to Tennessee's customers and their consumers, both under the present law and under the proposed Harris Bill if enacted.

[fol. 595] 43

Exhibit "B".

In the event of the enactment of the so-called Harris Bill, the Commission by its order of June 24, 1957 and the 5(a) procedure provided therein, has removed the protection against this very contingency that concerned the Commission as indicated by the above quotation from its May 20th order.

IX.

The Commission is in error in adopting the findings of fact and conclusions of the presiding examiner in this proceeding to the extent that such findings and conclusions have been excepted to by Long Island. In support of this statement reference is made to the exceptions previously filed to the presiding examiner's findings and conclusions by Long Island jointly with The Brooklyn Union Gas Company.

X.

In its June 24 decision, the Commission made this case turn on a finding that Tennessee's customers are so sorely in need of additional gas that regardless of the price, these contracts should be approved. It is respectfully submitted, however, that the record does not support that finding; indeed, the record is strangely silent on that question. The only reference in the record as to Tennessee's customers' need for this gas is the bare statement that Tennessee's purpose in making these contracts was to obtain gas reserves to supply the expansion of Tennessee's markets as shown by its application in Docket G-11,107. No reference was ever made to Tennessee's pending proposal to expand its system to supply an entirely new mid-western market area in competition with other gas pipeline companies. Information available to the Commission elsewhere in its files casts serious doubt on the correctness of this finding. Tennessee cannot be shown on this record to be in bad shape from the point of view of reserves to supply the needs of

its existing customers. The primary reason Tennessee reached for this gas and outbid everybody else was that Tennessee's expansion plans—for new markets to be served by its subsidiary, Midwestern Gas Transmission Company, rather than increased requirements for existing customers—would have depleted Tennessee's reserves to the point where a large additional supply of gas was desirable if it was to serve the expanded needs of its existing customers. Looking at the situation overall, then, this gas is not urgently needed for Tennessee's existing customers but rather because of its proposed expansion into new markets.

Moreover, the Tennessee system has competition for the new mid-western market from other pipelines and they presumably have contracted for the gas requirements of the territory they too wish to serve. If this Commission were in effect to allow each of the competing pipelines to bid up the price of gas in order to secure a supply which will be required by only one of them, the result is double pressure on the purchasing end of the gas market, which can lead only to a repetition of the chaotic markets which the CATCO contracts have already produced.

XI.

The Commission's order of May 20, 1957, issued in this proceeding is a lawful and proper order, fair, equitable and just to all parties to this proceeding and should not be modified.

WHEREFORE, Long Island for the reasons herein set forth respectfully makes application to this Commission for a rehearing in this proceeding.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY,
By CHARLES E. ELBERT,
Secretary.

Dated at Mineola, New York,
this 23rd day of July, 1957.

[fol. 597] 45

Exhibit "C".

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL POWER COMMISSION

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

APPLICATION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR REHEARING AND MOTION FOR STAY.

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UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

APPLICATION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR REHEARING AND MOTION FOR STAY.

Public Service Electric and Gas Company (Public Service), intervenor, pursuant to Section 19(a) of the Natural Gas Act, As Amended, and Section 1.34 of the Commission's Rules of Practice and Procedure, hereby applies for a rehearing of the Commission's "ORDER, UPON APPLICATION FOR REHEARING, ADOPTING INITIAL DECISION OF PRESIDING EXAMINER WITH MODIFICATIONS AND CONDITIONS," issued in these proceedings on June 24, 1957. In support hereof Public Service respectfully shows as follows:

1. On June 24, 1957, the Commission issued an order granting permanent certificates of public convenience and necessity to the above-named applicants authorizing the construction and operation of certain facilities and the sale of natural gas to Tennessee Gas Transmission Company (Tennessee) from leases off the coast of Louisiana in the Gulf of Mexico. The order of June 24, 1957, changed and superseded the order of the Commission, issued in these same proceedings on May 20, 1957, which said order in turn changed and superseded the order issued April 22, 1957, in these proceedings.

[fol. 599] 47

Exhibit "C".

In the order of April 22nd, the Commission granted temporary certificates to the applicants and stated that:

> *"The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be overemphasized.* This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> *"These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest.* See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. —Opinion No. 288, Nos. G-2659, G-2570, November 28, 1955, affirmed as Signal Oil and Gas Co. *v.* F. P. C., 238 F. 2d 771 (CA3), certiorari denied, 353 U. S. 923."
>
> (italics supplied)

The Commission remanded the proceedings to the Presiding Examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company (CATCO) to Tennessee to be made. The Commission further specified that the burden of proof and the burden of going forward with the presentation of evidence shall be upon the applicants herein, the CATCO companies and Tennessee.

Exhibit "C".

The order of the Commission issued May 20, 1957, changed the order of April 22, 1957, by granting permanent certificates of public convenience and necessity in place of temporary certificates to CATCO, permitting the applicants to sell natural gas to Tennessee and to construct and operate the necessary facilities. This order reiterated the fact that:

> *"As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. * * *"*
> (Italics supplied.)

Accordingly, the Commission conditioned the issuance of the certificates and required each of the CATCO companies to amend its contract with Tennessee so as to provide that the initial price shall be 18¢ per Mcf instead of 22.4¢ per Mcf.

The order issued June 24, 1957, granted permanent certificates to the applicants without any condition affecting the initial price of 21.4¢ per Mcf. Concurrently with this order the Commission issued an investigation of the rates and charges of Cities Service. The order of June 24, 1957, noted that rate investigations were already proceeding with respect to the other three applicants.

In the orders issued April 22nd and May 20th, the Commission clearly found as a fact that the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at 22.4¢ per Mcf. No evidence has been supplied or introduced since the Commission's orders of April 22nd and May 20th which would cure the fatal defect in the proof and it is, therefore, respectfully submitted that the Commission erred in departing from the findings made in

its two prior orders that the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at the rate level proposed. The factors, which the Commission found made it abundantly evident that in the public interest this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest, remain unchanged and still require the applicants to prove that their applications are in the public interest.

2. The applicants failed to meet the requirements for the issuance of certificates of convenience and necessity in that they failed to present probative evidence that the proposed sale is or will be required by the present or future public convenience and necessity in accordance with Section 7(e) of the Natural Gas Act.

3. The Commission erred in relieving the applicants of the burden of proof and the burden of going forward with the presentation of evidence on the issue of the rate at which the public convenience and necessity requires the sale to be made. The substitution of Section 5(a) proceedings does not protect the customers of Tennessee nor the consuming public because the applicants are permitted to charge the contract price of 22.4¢ with no provision for repayment of any overcharges which might subsequently be determined.

At the proposed delivery rate of 240,000 Mcf per day, the annual payments by Tennessee to the CATCO group at the 22.4¢ price would be in excess of $19,600,000; at an 18¢ price, the annual payments would be slightly under $15,800,000, or a difference of $3,850,000 annually. The customers of Tennessee and the consuming public will, as a result, be unlawfully deprived of approximately $3,850,000 per year for some years to come. It is well known that rate investigations are time consuming and in the instant

proceedings the applicants have represented to the Commission that they could not present sufficient evidence in justification of the rate within any reasonable period of time in the future. If the applicants themselves are faced with this dilemma, certainly the Commission's Staff and this intervenor would be faced with even greater difficulty, to the detriment of the ultimate consumers of the natural gas and an unlawful windfall to the producer applicants will result. Certificate applications which contain such inherent defects as to require immediate institution of a rate investigation and under which the applicants are relieved of their statutory burden of proof are unlawful and certainly not in the public interest. Section 5(a) proceedings applied to certificate applications do not adequately protect consumers within the meaning and intent of the Natural Gas Act.

4. The record in these proceedings does not contain competent material and relevant evidence which supports the finding of the Commission that the public served through the Tennessee system is greatly in need of increased supplies of natural gas.

5. The Commission erred in adopting the findings of fact and the conclusions of the Presiding Examiner that the applicants had proved by competent evidence that they are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

6. The Commission erred in that it did not attach a rate condition to the certificates which the present and future public convenience and necessity required the Commission to do, based on the record and the law as set forth in the matters of *Cities Service Gas Company and Signal Oil and Gas Company*, Docket Nos. G-2659 and G-2570, affirmed 238 F. 2d 771, certiorari denied 353 U. S. 923.

Exhibit "C".

7. The absence of competition among the four sellers as disclosed by the record imperatively requires the exercise by the Commission of its power to impose a rate condition which will assure that the services authorized will be initially rendered under reasonable rates. It would only be by coincidence that the Commission will ultimately find that the cost of service for the four companies requires the establishment of identical rates of 22.4¢ per Mcf. The order of the Commission issued June 24, 1957, assumes without any proof whatsoever that this most unlikely coincidence exists.

8. The Commission erred in not imposing a rate condition because the actual price which Tennessee will be obligated to pay cannot be determined from the evidence for the reasons that:

(a) In addition to the stated initial price of 22.4¢ per Mcf, Tennessee will be required to spend over $16,000,000 in order to construct the gathering facilities.

(b) The record does not contain any evidence from which it can be determined what operating expenses will be incurred by Tennessee.

(c) Tennessee is required by the contracts to transport liquefiable hydrocarbons for the applicants at no charge.

(d) Tennessee is obligated to construct up to 40 miles of additional pipe line per year.

(e) Another condition in the contracts permits the applicants to deliver to Tennessee the higher priced off-shore gas from the CATCO fields in lieu of the cheaper gas presently dedicated to Tennessee from the West Delta area.

9. The Commission erred in adopting the Examiner's findings that the contracts were entered into as a result of arms-length bargaining and failed to properly inquire into the relationship between the applicants concerning the

negotiations leading to the contracts to sell the gas in question.

10. The Commission erred in that it adopted the Examiner's finding that the effect of the proposed service on Tennessee's rates is not an issue to be considered in this certificate proceeding.

11. The Commission erred in that it gave consideration to the representations of the applicants at the oral argument held on June 12, 1957, that they were unwilling to carry the burden of proof as to price and in the event any price conditions were imposed such as were contained in the prior orders of April 22nd and May 20th, that they would not sell the gas to Tennessee nor even in the interstate market.

WHEREFORE, Public Service respectfully requests that the Commission grant this Application for Rehearing as requested by this intervenor and pending such action stay the effectiveness of its order issued June 24, 1957.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BY:

(Signed) EDWARD S. KIRBY
Edward S. Kirby
Attorney for Public Service
Electric and Gas Company.

Dated: Newark, New Jersey
July 19, 1957.

Exhibit "D".

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION.

Before Commissioners:

Frederick Stueck, Acting Chairman; Seaborn L. Digby, William R. Connole and Arthur Kline.

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

ORDER DENYING APPLICATIONS FOR REHEARING.

(Issued August 15, 1957.)

On July 23, 1957, Public Service Electric and Gas Company, The Long Island Lighting Company, and the New York Public Service Commission, and on July 24, 1957, Lake Shore Pipe Line Company, have filed applications for rehearing under Section 19 (b) of the Natural Gas Act of our order issued June 24, 1957. In that order upon rehearing, we reversed and set aside our previous orders of April 22, 1957, and May 20, 1957, and adopted, with certain modifications, the initial decision of the presiding examiner granting certificates of public convenience and necessity to Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil

Company (CATCO), for the sale of natural gas from their offshore platforms in the Gulf of Mexico to Tennessee Gas Transmission Company. We noted that rate investigations had been instituted against Continental Oil, Atlantic and Tidewater, and contemporaneously with our order we instituted a rate investigation against Cities Service. The certificates issued by our June 24 order have been accepted by all four companies.

The applications do not set forth any contentions or other matter that was not considered by us in connection with our June 24, 1957, order except that the Long Island Lighting Company objects to our adopting the findings of fact and conclusions of the presiding examiner in certain respects. Upon considering this matter further we are of the opinion that our order properly stands upon our own discussion of the facts. Therefore it will not be necessary to adopt the presiding examiner's conclusions on the facts except for the ultimate result of issuing the certificates. We do adopt, however, his recital of the facts.

The Commission finds:

The applications for rehearing of our order issued on June 24, 1957, in this proceeding, except as stated above, set forth no new facts and no principles of law which either were not fully considered by the Commission when it issued that order or which having now been considered warrant any change in or modification of such order. All contentions and objections not specifically discussed or referred to herein have been considered and found either without basis in law or support in fact, but are not sufficiently material to warrant individual treatment or have been adequately disposed of otherwise.

[fol. 607] 55

Exhibit "D".

The Commission orders:

(A) The above applications for rehearing filed on July 23 and 24, 1957 with respect to our order of June 24, 1957, are hereby denied.

(B) In place of ordering Clause (F) of our order of June 24, 1957, we adopt the recital of facts made by the presiding examiner and his conclusion that certificates of public convenience and necessity should be issued to the CATCO companies.

By the Commission. Commissioner Connole dissenting.

J. H. GUTRIDE,
Joseph H. Gutride,
Secretary.

Exhibit "E".

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Seaborn L. Digby, William R. Connole and Arthur Kline.

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY, TENNESSEE GAS TRANSMISSION COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049 Docket No. G-11107

FINDINGS AND ORDER ISSUING TEMPORARY CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

(Issued April 22, 1957)

Continental Oil Company on September 5, 1956, The Atlantic Refining Company on September 7, 1956, and Cities Service Production Company and Tidewater Oil Company on September 10, 1956 (together termed CATCO) have filed applications pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of gas from their leases off the coast of Louisiana to Tennessee Gas Transmission Company. On its part, Tennessee Gas has filed an application for a certificate of public convenience and necessity on September 19, 1956, as amended March 1, 1957, for authority,

Exhibit "E".

among other things, to construct and operate facilities for the transportation of gas from the offshore platforms owned by CATCO to a point on its main pipeline system at Kinder, Louisiana. The presiding examiner's decision issued March 29, 1957, would grant certificates to CATCO, without imposing a rate condition but with a condition that a certificate be issued to Tennessee Gas for the necessary facilities.

Exceptions were filed by interveners New York Public Service Commission, Long Island Lighting Company, Lake Shore Pipe Line Company, and Public Service Electric and Gas Company objecting to the rate proposed and requesting a rate condition, and by CATCO, objecting to the requirement that a certificate be granted to Tennessee Gas unless a temporary certificate would satisfy this condition.

The record shows that the four producer companies each owns a quarter interest in gas leases located some 12 to 25 miles off the coast of Louisiana in the Gulf of Mexico, in the East Cameron, West Cameron, and Vermilion areas, totalling some 95,000 acres and containing reserves of some 1,673,929,000 Mcf including 430,000,000 Mcf untested by conventional methods. In this offshore field the four companies own platforms, wells, separators, and meters, but no pipelines. To connect with the offshore wells, Tennessee Gas proposes to build some 46 miles of 26-inch line from its main line at Kinder, Louisiana, to the shore, and some 61 miles of 26-inch, 20-inch, 16-inch, and 12-inch line thence to the platforms at an estimated cost of $16,315,412.

The sales of gas will be made to Tennessee Gas at the offshore platforms under the terms of separate contracts executed in August of 1956, all of whose basic provisions are identical, providing that Tennessee Gas must accept 175,000 Mcf or four-fifths of the total quantity which the wells are capable of producing, whichever is the lesser, until November 1, 1958. After that it will be required to

take and pay for 1,000 Mcf for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves. The testimony showed that the reserves were adequate to meet contract deliveries.

The initial price which would be paid by Tennessee Gas under each of the contracts, is 22.4 cents per Mcf (including one cent per Mcf for the Louisiana gathering tax) until November 1, 1962. Thereafter, the price would escalate by two cents per Mcf every four years until the contract in question expires. The record shows that the 22.4-cent price is higher than Tennessee Gas is paying under any other contract. It is this price, with the provision for escalation, to which the interveners have made vigorous objections in exceptions to the presiding examiner's decision, which would grant a certificate without a rate condition attached to it. They contend that if the rate were allowed to stand it would establish a higher-price plateau in a new area to the detriment of consumers.

The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be overemphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.

These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See *Cities Service Gas Co.*, Signal Oil and Gas Co., 14 F. P. C. , opinion No. 288, Nos. G-2569,

[fol. 611]

Exhibit "E".

G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F. P. C.*, 238 F. 2d 771 (CA3), certiorari denied, 353 U. S. 923.

The examiner has found there is a need for those volumes of gas on the system of Tennessee Gas, and that the applicants are ready and able to deliver them and take them, respectively. These findings we adopt. They argue conclusively that the sale is necessary in the public interest. All that remains for disposition is a determination as to the rate level at which the public convenience and necessity requires them to be made. Compelling reasons prevent us from postponing making these volumes available, however, until such time as the determination has been made.

The contracts between CATCO and Tennessee Gas provide November 1, 1957, as the date for commencing service, and in order to comply with the leases and the Louisiana Shelflands Act, production should commence by 1958. To meet this schedule Tennessee Gas must build its underwater pipelines before the onset of the season of bad weather. In view of this total situation we are disposed at this time to grant temporary certificates to CATCO for the sale of gas and to Tennessee Gas as requested by it for its proposed 107 miles of connecting pipelines.[1] At the same time, we shall remand the CATCO proceedings to the presiding examiner to determine at what rates the public convenience and necessity requires these sales to be made if permanent certificates are to be granted to these companies upon final disposition of their applications. By the procedures adopted here, however, we do not necessarily imply that the rates at which the proposed sales would be made are not in the public interest.

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[1] By letter of March 29, 1957, Tennessee Gas was granted a temporary certificate for facilities covered by the same application in docket No. G-11107, but specifically excluding the 107 miles of pipeline referred to here.

Exhibit "E".

The Commission finds:

(1) Continental, Atlantic, Tidewater, and Cities Service, independent producers of natural gas with respect to the sales here involved, upon commencement of the sales authorized herein, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act, if not already in this status because of other transportation or sales.

(2) The sales of natural gas by CATCO hereinbefore described, as more fully described in the applications, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by CATCO, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Tennessee Gas is engaged in the transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission, and, therefore, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(4) The facilities to be constructed by Tennessee Gas as hereinbefore described are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as an integral part of Tennessee Gas' existing pipeline system, and the construction and operation thereof by Tennessee Gas are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

[fol. 613] 61

Exhibit "E".

(5) To assure maintenance of adequate service and to serve Tennessee Gas and its customers, the public convenience and necessity requires that temporary certificates be issued to CATCO and Tennessee Gas as hereinafter ordered.

(6) It is necessary and appropriate in the administration of the Natural Gas Act that the proceedings in docket Nos. G-11024, G-11034, G-11046, and G-11049 be remanded to the presiding examiner to make the determination required in (D) below.

(7) To the extent that the exceptions above referred to are inconsistent with the Commission's order herein, they should be denied.

The Commission orders:

(A) A temporary certificate of public convenience and necessity is hereby issued to CATCO authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding.

(B) A temporary certificate of public convenience and necessity is hereby issued authorizing Tennessee Gas to construct and operate approximately 107 miles of pipeline to transport natural gas from the offshore platforms of CATCO to Tennessee Gas' main system at Kinder, Louisiana, as hereinbefore described and as more fully described in its application.

(C) The temporary certificates issued herein shall be without prejudice to such final disposition of the applica-

Exhibit "E".

tions of CATCO and Tennessee Gas as the record may require.

(D) The proceedings in Docket Nos. G-11024, G-11034, G-11046, and G-11049 shall be remanded to the presiding examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by CATCO to Tennessee Gas to be made if these CATCO companies are granted permanent certificates of public convenience and necessity.

(E) In proceedings conducted in accordance with the requirements of paragraph (D) above the burden of proof and the burden of going forward with the presentation of evidence shall be upon the applicants herein, the CATCO Companies and Tennessee Gas.

(F) The certificates of public convenience and necessity issued herein are conditioned upon the receipt by the Commission within 15 days of the issuance of this order of letters signed by a duly authorized official of each of the CATCO Companies and Tennessee Gas, unconditionally accepting the temporary certificates hereby granted under the conditions herein stated.

(G) Exceptions filed with respect to the initial decision of the presiding examiner which are inconsistent with our action herein are hereby denied.

By the Commission.

J. H. Gutride,
Joseph H. Gutride,
Secretary.

Exhibit "E".

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY, TENNESSEE GAS TRANSMISSION COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049 Docket No. G-11107

April 22, 1957.

DIGBY, Commissioner, *concurring:*

I concur completely in the issuance of temporary certificates to the producers and to Tennessee. I also concur in the order reopening and referring the record back to the Examiner to be proceeded with on the applications of the producers for permanent and final certificates of public convenience and necessity to make the sale to Tennessee. I do not believe that the Commission should presume that the final certificates, if and when issued, should be conditioned by prescribing an initial rate.

.....

S. L. DIGBY, Commissioner.

Exhibit "F".

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION.

Before Commissioners:

Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

FINDINGS AND ORDER ISSUING PERMANENT CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND MODIFYING PREVIOUS ORDER.

(Issued May 20, 1957.)

On May 6, 1957, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil Company (together termed CATCO) filed a document entitled "Application for Rehearing" but in effect requesting modification of the Commission's order of April 22, 1957, issuing temporary certificates of public convenience and necessity to CATCO and Tennessee Gas Transmission Company in docket No. G-11107. Since the order of April 22, 1957, was not a final order and since CATCO's filing did not request a hearing, but rather modification of our order, we shall treat the filing as a mo-

[fol. 617] 65

Exhibit "F".

tion for modification. Answers were filed on May 14, 1957, by Public Service Electric and Gas Company, and on May 16, 1957, by the New York Public Service Commission, Lake Shore Pipe Line Co., Brooklyn Union Gas Company, and Long Island Lighting Company requesting that the Commission deny CATCO's motion, and on May 16, 1957, by Tennessee Gas urging that the motion be granted.

The temporary certificates issued by our order of April 22, 1957, authorized CATCO to sell natural gas to Tennessee Gas from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, and authorized Tennessee Gas to construct and operate approximately 107 miles of pipeline from the offshore platforms of CATCO to a point on its main system at Kinder, Louisiana. The Commission remanded the proceedings to the presiding examiner to determine at what rate the sale of natural gas by CATCO to Tennessee Gas should be made if permanent certificates were to be granted.

By their filing of May 6, 1957, the CATCO companies state that the nature and extent of the economic risk which they have to undergo is such as to foreclose their acceptance of temporary certificates. They say further that they could not present sufficient evidence at the hearing contemplated by the Commission's order within any reasonable period in the future and could not afford to commence construction until at least the initial rate question is resolved.

The CATCO companies urge that if there is no change in existing law the Commission will have continuing control, under Sections 4 and 5 of the Natural Gas Act, over the rate to be charged and any increases proposed. However, if the Harris Bill, H. R. 6790, 85th Congress, or some bill similar to it, becomes law they admit that the Commission might possibly lose continuing supervision over the future price increases provided in the several contracts between

the CATCO companies and Tennessee Gas. To permit the Commission to retain such supervision the CATCO companies propose to amend their contracts so that, if the Harris Bill is enacted into law, the initial sales price shall be 21.4 cents per Mcf[1] until November 1, 1962, as at present, but after that the "reasonable market price" within the meaning of the bill and as determined by this Commission shall prevail; provided, however, that such "reasonable market price" shall be "not less than 21.4 cents per Mcf." Under this proposal, adjustments may be initiated by the sellers at four-year intervals under "indefinite pricing clauses", which would replace the "definite pricing clauses" contained in the contracts but would be limited by the step increases now provided in the contracts. Tennessee Gas states in its answer that it agrees with and fully supports CATCO's proposal and will enter into the proposed amendments to the gas sales contracts of the CATCO companies.

In view of the need for the volumes of gas and the exigencies of the construction schedule to which we adverted in our previous order, we are disposed to modify our order of April 22, 1957, and to grant a permanent certificate to CATCO conditioned upon the amendment of the contracts between them and Tennessee Gas to reflect the modifications of CATCO's proposal in this regard as hereinafter stated. However, this proposal does not go far enough, for it leaves unaffected the 21.4 cents initial sales price. As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us. At the same time we realize that any proceeding to determine

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[1] Reimbursement for the one-cent Louisiana gathering tax would be in addition to this amount.

the proper rate level would so delay the construction schedule as to cause possible forfeiture of the leases. To permit the CATCO companies and Tennessee Gas to proceed with their plan to make available the volume of gas contemplated to be delivered from the offshore leases and at the same time insure that the interests of consumers are protected not only as to the future prices, but as to the initial price, we conclude that permanent certificates should issue to CATCO upon acceptance by it of the condition described below, without remanding the proceedings to the presiding examiner as we had provided.

The condition to the certificates shall be that each of the CATCO companies shall amend its contract with Tennessee Gas so as to provide that the initial price shall be 18 cents per Mcf (including one cent per Mcf for the Louisiana gathering tax). This price, the record shows, is the highest price presently being paid by Tennessee Gas for the purchase of any gas produced in the Southwest area. The contracts shall be further amended to provide that the CATCO companies shall be entitled to file for an increased rate to be effective one day after commencement of deliveries to Tennessee Gas, but such increased rate shall not be in excess of 22.4 cents per Mcf (inclusive of the one-cent Louisiana gathering tax). The contracts shall also be amended to provide that the price so determined and fixed shall be in effect to November 1, 1962, unless changed by the Commission as hereinafter provided, and seller may file for indefinite price increases to be effective on or after November 1, 1962, as provided in the herein proposed amendments to the contracts.

We are not determining that the 18-cent maximum price set herein is the proper price under the standards of the Act as presently constituted or as it might be amended by the Harris Bill. What we are doing is providing a means of protecting the interests of the consuming public while at

the same time giving the producers and the pipeline company an opportunity to go forward with their respective construction programs. Under the present provisions of the Act, we have the power to suspend for a period of five months any proposed increased rates; however, to give further assurances to the producers that they will not be penalized by suspension action, we propose to limit suspension of the initial rate increase filing to a period of 24 hours. Thus, the producers are assured of receiving the proper price under standards of the Act as presently constituted or as they may be constituted at that time.

The Commission finds:

(1) It is necessary and appropriate to modify the Commission's order issued April 22, 1957, in the above-entitled proceeding, in the manner set forth below.

(2) The CATCO companies are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules, and regulations of the Commission thereunder.

(3) The sales of natural gas by the CATCO companies to Tennessee Gas, as referred to above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Permanent certificates of public convenience and necessity are hereby issued to the CATCO companies, without further hearing, authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction

and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding, subject to the conditions set forth below.

(B) Each of the CATCO companies, within 20 days after the issuance of this order, shall file with the Commission a duly executed amendment to Section 10 of the contract submitted as an exhibit to its certificate application providing for sale of natural gas to Tennessee Gas embodying the following language:

> 10. *Prices*—The prices to be paid by Buyer to Seller for all gas delivered to or, if available and not taken by Buyer, to be paid for hereunder, shall be as follows:
>
> From the date of initial delivery, or November 1, 1957, whichever occurs first.....17 cents per Mcf; provided that after the 17-cent price referred to above has been in effect for one day, Buyer agrees that Seller may file with the Federal Power Commission a proposed changed and increased price which shall be not more than 21.4 cents per MCF, and Seller shall be entitled to receive and Buyer shall pay such portion of such increased price as may be allowed by the Federal Power Commission under then applicable statutory standards. The price so allowed by the Federal Power Commission shall continue in effect to November 1, 1962, unless otherwise changed by the Federal Power Commission under applicable statutory provisions. Provided that if Seller should determine that the price determinable under applicable statutory standards for gas at the points of delivery for any of the four (4) year periods hereinafter listed should be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such

period, that Seller proposes to increase the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller that the price determinable under then applicable statutory standards is in excess of the price then being paid hereunder, and Seller shall be entitled to receive and Buyer shall pay such portion of such proposed increased price as may be allowed by the Federal Power Commission under then applicable statutory standards.

Any price so determined and fixed shall be not less than the price determined and fixed by the Commission under applicable statutory standards and not more than:

23.4 Cents per MCF.....	From November 1, 1962 to November 1, 1966
25.4 Cents per MCF.....	From November 1, 1966 to November 1, 1970
27.4 Cents per MCF.....	From November 1, 1970 to November 1, 1974
29.4 Cents per MCF.....	From November 1, 1974 to November 1, 1978;

and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF.....	From November 1, 1978 to November 1, 1982
33.4 Cents per MCF.....	From November 1, 1982 to November 1, 1986
35.4 Cents per MCF.....	From November 1, 1986 to the expiration of this Contract

Except as altered hereinabove, the provisions of Section 10 shall remain unaffected and in full force and effect.

[fol. 623] 71

Exhibit "F".

(C) The certificates issued herein shall be accepted in writing and under oath within 30 days from the date of issuance of this order and by such acceptance the CATCO parties shall severally and collectively obligate itself and themselves to commence service upon the completion of construction of the "offshore facilities" by Tennessee Gas. Such acceptance or acceptances shall be accompanied by a resolution of the Board of Directors duly authenticated indicating the approval of the acceptance of the certificates hereby granted.

(D) The certificates issued herein are not transferable and shall be effective only so long as each CATCO company continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the CATCO companies. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(F) Paragraphs (A), (C), (D), (E), and (F) of the order issued April 22, 1957, insofar as they are inconsistent with the provisions of this order, are hereby modified.

By the Commission.

Commissioner Kline concurring in part.

Commissioner Digby dissenting.

J. H. Gutride,
Joseph H. Gutride,
Secretary.

Exhibit "F".

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, TIDEWATER OIL COMPANY.	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

(Issued May 20, 1957.)

Kline, Commissioner, *concurring* in part:

I concur solely because I see no other ready solution to the problems presented in this proceeding. I feel that under ordinary circumstances the fixing of initial prices in a sales contract is a matter between the producer and purchaser and that the Commission should not attempt to take over this function. I agree with the Commission action in this case solely because of the unusual situation confronting us.

I cannot concur with the Commission action in one respect. I would provide that the contract be amended as set forth in Paragraph (β) of the Commission order only in the event that the Harris Bill becomes law. I would provide that in the event the bill does not become law the certificate issue at the initial contract price of 21.4¢ per Mcf. The right of the Commission or interveners to invoke Section 5(a) proceedings is sufficient protection to the consumers under existing law.

.....

ARTHUR KLINE, Commissioner

Certificate of Service.

I, Edward S. Kirby, Attorney for Public Service Electric and Gas Company, do hereby certify that I have on this 11th day of October, 1957, served upon each of the following persons a copy of the foregoing petition for review by depositing same in the United States Mail, postage prepaid:

Hon. Jerome K. Kuykendall,
Chairman
Federal Power Commission
441 G. Street, N. W.
Washington, D. C.

Roland B. Voight, Esq.
Continental Oil Company
Box 2197
Houston, Texas

Edward J. Kremer, Jr., Esq.
The Atlantic Refining Company
Box 2819
Dallas, Texas

Bernard A. Foster, Jr., Esq.
Ross, Marsh & Foster
725 15th Street, N. W.
Washington 5, D. C.

Cecil C. Cammack, Esq.
Cities Service Production Co.
Bartlesville, Oklahoma
Gentry Lee, Esq.

Cities Service Production Co.
806 Cities Service Building
Bartlesville, Oklahoma

Gene M. Woodfin, Esq.
Vinson, Elkins, Weems and Searles
11th Floor, Esperson Bldg.
Houston, Texas

Robert O. Koch, Esq.
Tidewater Oil Company
Esperson Building
Houston, Texas

Harry S. Littman, Esq.
Jack Werner, Esq.
Tennessee Gas Transmission Co.
317 Wyatt Building
Washington 5, D. C.

Edwin F. Russell, Esq.
Robert B. Lisle, Esq.
Cullen and Dykman
177 Montague Street
Brooklyn, New York

Thomas F. Ryan, Jr., Esq.
Gallagher, Connor & Boland
821 - 15th Street, N. W.
Washington, D. C.

Kent H. Brown, Esq.
New York Public Service
Commission
55 Elk Street
Albany, New York

Department of Public Utilities
Board of Public Utility
Commissioners
1100 Raymond Boulevard
Newark, New Jersey

Ewing G. Simpson, Presiding
Examiner
Federal Power Commission
441 G. Street, N. W.
Washington 25, D. C.

Robert L. Russell, Esq.
John Paul Geneau, Esq.
Federal Power Commission
441 G. Street, N. W.
Washington 25, D. C.

EDWARD S. KIRBY.

[fol. 627] [File endorsement omitted]

[fol. 628]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF TENNESSEE GAS TRANSMISSION COMPANY FOR LEAVE TO INTERVENE—Filed October 12, 1958

To the United States Court of Appeals for the Third Circuit and the Honorable Judges Thereof:

Tennessee Gas Transmission Company (Tennessee) respectfully moves this Honorable Court, pursuant to Rule 18(6), for leave to intervene in opposition to the Petition for Review, to be heard upon briefs and oral argument, and otherwise to participate fully as a party in this proceeding in which Petitioner seeks to have reviewed and set aside an order of the Federal Power Commission. In support of this motion, Tennessee respectfully shows that:

I

Tennessee is a corporation organized and existing under the laws of the State of Delaware with its principal office in [fol. 629] the Commerce Building at Houston, Texas. Tennessee is a natural-gas company within the meaning of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 821; 15 U. S. C. §717, *et seq.*). It is engaged in the business of producing, purchasing, transporting and selling natural gas in interstate commerce, under authorizations granted by the Commission. Tennessee's main pipeline system extends in a northeasterly direction from sources of supply in

Texas and Louisiana through the states of Texas, Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New Jersey, New York, and into Massachusetts, New Hampshire, Rhode Island and Connecticut.

Movant is the Tennessee Gas Transmission Company referred to in the Petition for Review to whom the gas involved herein is to be sold.

II

The Federal Power Commission order sought to be reviewed intimately concerns Tennessee, and the relief sought by Petitioner would, if granted, have a direct, substantial, and adverse effect upon Tennessee and the customers served by it.

By application filed September 19, 1956, as amended March 1, 1957, Tennessee applied for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, for authority, among other things, to construct and operate facilities for the transportation of gas from the offshore platforms owned by CATCO[1] to a [fol. 630] point on Tennessee's main line pipeline system at Kinder, Louisiana. By Order of the Commission issued April 22, 1957, as modified by an Order issued May 20, 1957, Tennessee was granted a temporary certificate of public convenience and necessity authorizing it to construct and operate such facilities. The facilities are now under construction and are scheduled for completion by the end of this year. The purpose of these facilities (involving 107 miles of pipeline at an estimated cost of approximately $16,000,000) is to transport the CATCO gas involved herein from the offshore platforms of CATCO to Tennessee's main transmission line for resale to Tennessee customers.

[1] Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil Company, the applicants in the proceedings before the Commission in which the order under review was issued.

III

Tennessee was a party to the instant proceeding before the Commission and presented evidence as to its need for the CATCO gas in order to serve the expanding needs of the market served by it. Loss of the CATCO gas would have a substantial adverse effect upon Tennessee.

IV

It is the primary purpose of Tennessee in seeking intervention herein to show that there is no merit to the contentions of Petitioner; that the Order under review was proper and in the public interest; that the initial price of which Petitioner complains is the subject of rate investigations instituted by the Federal Power Commission pursuant to Section 5(a) of the Natural Gas Act; and that such rate investigations will adequately protect the consuming public with regard to price of the gas involved herein.

V

[fol. 631] It is, therefore, respectfully submitted that Tennessee has a direct and immediate interest in this review proceeding, which is not represented by any other party.

Wherefore, Tennessee respectfully moves this Honorable Court for leave to intervene in this cause and be made a party thereto in support of the Order here sought to be reviewed, to be heard upon briefs and oral argument, and otherwise to participate fully herein as a party.

Respectfully submitted,

Tennessee Gas Transmission Company, By /s/ Harry S. Littman, 317 Wyatt Building, Washington 5, D.C., Its Attorney.

William C. Braden, Jr., Commerce Building, Houston, Texas.

Harry S. Littman, Jack Werner, 317 Wyatt Building, Washington 5, D.C., Of Counsel.

October 11, 1957

[fol. 632] *Duly sworn to by Harry S. Littman, jurat omitted in printing.*

[fol. 633] [File endorsement omitted]

No. 12,401

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF TIDEWATER OIL COMPANY TO INTERVENE IN OPPOSITION TO THE PETITION FOR REVIEW—Filed October 17, 1957

[fol. 634] To the United States Court of Appeals for the Third Circuit and the Honorable Justices Thereof:

Tidewater Oil Company (Tidewater) respectfully moves the Court for permission to intervene herein in opposition to the Petition for Review of the Public Service Commission of the State of New York (Petitioner), and in support of the correctness and binding effectiveness of the orders of the Federal Power Commission (Commission) sought to be attacked by Petitioner, and as required by Rule 18(6) of this Court, shows as follows:

Nature of Tidewater's Interest and Grounds Upon Which Intervention Is Sought

Tidewater Oil Company is an independent producer engaged in the production and sale of natural gas. Tidewater, Continental Oil Company (Continental), Atlantic Refining Company (Atlantic) and Cities Service Production Company (Cities Service) each owns an undivided twenty-five percent (25%) interest in certain leases in the Gulf of Mexico off the shore of Cameron and Vermilion Parishes, Louisiana. Each of the afore-mentioned independent

[fol. 635] producers applied for a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C.A. Section 717f(c) for the sale of natural gas from these leases in the Gulf of Mexico to Tennessee Gas Transmission Company (Tennessee) pursuant to separate contracts between each Seller and Tennessee. Tidewater's application for a Certificate of Public Convenience and Necessity was filed on September 10, 1956, in Docket No. G-11049; Continental's application was filed on September 5, 1956, in Docket No. G-11024; Atlantic's application was filed on September 7, 1956, in Docket No. G-11034; and Cities Service's application was filed on September 10, 1956, in Docket No. G-11046. These applicants are collectively referred to as the CATCO companies. These proceedings were consolidated by order of the Federal Power Commission and were heard on a single record.

Concurrently, by application dated September 19, 1956, Tennessee applied for a Certificate of Public Convenience and Necessity pursuant to 15 U.S.C.A., Section 717f(c) for authority to institute construction of facilities to transport the gas from the offshore locations to the mainland. By [fol. 636] order of the Commission issued April 22, 1957, as modified by an order issued May 20, 1957, Tennessee was granted a temporary Certificate of Public Convenience and Necessity authorizing it to construct and operate such facilities, and pursuant to this certificate it has commenced construction of approximately 107 miles of pipe line from the offshore platforms of the CATCO companies to a point on Tennessee's main transmission line at Kinder, Louisiana.

Pursuant to notice issued February 8, 1957, hearings on the CATCO applications were held February 28, 1957, and concluded the following day. Intervention by various parties including the Petitioner herein was permitted by order of the Commission issued February 27, 1957. Subsequent to the decision of the Presiding Examiner issued March 29, 1957, and intermediate orders of the Commission issued on April 22, 1957, and May 20, 1957, these applications culminated in the Commission's order of June 24, 1957, which issued conditional certificates to each of the CATCO companies. Each of the CATCO companies has complied with the conditions set forth in Paragraphs (B)

and (C) of the order issued by the Commission on June 24, 1957. Tidewater complied with the conditions by filing [fol. 637] with the Commission within twenty (20) days after the issuance of said order an amendment to its contract with Tennessee and a corporate resolution authorizing such amendment. Petitioner's application for a rehearing of the June 24th order was denied by the Commission's order issued April 15, 1957.

The order from which the Petitioner appeals arose from proceedings before the Commission in which the Petitioner was an intervenor in opposition to Tidewater's application for a Certificate of Public Convenience and Necessity. Tidewater was a party to said proceedings and presented evidence in support of its application for such certificate. In its Petition for Review the Petitioner, inter alia, prays:

> "That said proceedings and the decision and order issued therein on June 24, 1957, be reviewed by this Court; that said order be set aside, vacated and annulled in its entirety and the proceeding be remanded to the respondent Federal Power Commission."

If the order issued by the Commission on June 24, 1957, is set aside as requested in that part of Petitioner's prayer set out above, there would be a substantial adverse effect upon Tidewater. Said order was issued "to insure that de- [fol. 638] liveries of gas by the four CATCO companies to Tennessee Gas will commence as promptly as possible." The CATCO companies have expended great sums in developing gas reserves underlying their offshore leases, and as indicated above, Tennessee is now constructing facilities for the transmission of this gas which are scheduled for completion by the end of this year. Under these circumstances, it is clear that Tidewater has a direct and immediate interest in any attempt to set aside the June 24, 1957, order and thereby prevent the sale and delivery of gas pursuant to such order. Tidewater's vital interest in this matter cannot be adequately protected unless it is allowed to intervene herein.

Prayer

Wherefore, premises considered, Tidewater moves and prays:

1. That it be authorized and permitted by this Court to intervene in this cause in opposition to Petitioner and in support of the validity and correctness of the action and orders of Respondent.

2. That in accordance with Rule 18(6), it be permitted [fol. 639] to participate in the designation of the record.

3. That it be permitted to file an answer to the Petition for Review within such time and upon such terms as this Court may designate.

4. That pursuant to the Rules of this Court, it be permitted to participate in the briefing, oral argument, and submission of this matter.

5. For such other orders or directions as this Court may deem proper in the premises.

Respectfully submitted,

Tidewater Oil Company, By: /s/ Gene M. Woodfin, Its Attorney.

Gene M. Woodfin, J. Evans Attwell, Niels Esperson Building, Houston 2, Texas.

Robert O. Koch, Tidewater Oil Company, P. O. Box 1404, Houston, Texas, Counsel for Intervenor.

[fol. 640] *Duly sworn to by Gene M. Woodfin, jurat omitted in printing.*

[fol. 641] Certificate of Service (omitted in printing).

[fol. 642] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF TIDEWATER OIL COMPANY TO INTERVENE IN OPPOSITION TO THE PETITION FOR REVIEW—Filed October 17, 1957

[fol. 643] To the United States Court of Appeals for the Third Circuit and the Honorable Justices Thereof:

Tidewater Oil Company (Tidewater) respectfully moves the Court for permission to intervene herein in opposition to the Petition for Review of Long Island Lighting Company and Public Service Electric and Gas Company (Petitioners), and in support of the correctness and binding effectiveness of the orders of the Federal Power Commission (Commission) sought to be attacked by Petitioners, and as required by Rule 18(6) of this Court, shows as follows:

Nature of Tidewater's Interest and Grounds Upon Which Intervention Is Sought

Tidewater Oil Company is an independent producer engaged in the production and sale of natural gas. Tidewater, Continental Oil Company (Continental), Atlantic Refining Company (Atlantic) and Cities Service Production Company (Cities Service) each owns an undivided Gulf of Mexico off the shore of Cameron and Vermilion twenty-five percent (25%) interest in certain leases in the Parishes, Louisiana. Each of the afore-mentioned indepen-

dent producers applied for a Certificate of Public Convenience [fol. 644] and Necessity pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C.A. Section 717f(c) for the sale of natural gas from these leases in the Gulf of Mexico to Tennessee Gas Transmission Company. (Tennessee) pursuant to separate contracts between each Seller and Tennessee. Tidewater's application for a Certificate of Public Convenience and Necessity was filed on September 10, 1956, in Docket No. G-11049; Continental's application was filed on September 5, 1956, in Docket No. G-11024; Atlantic's application was filed on September 7, 1956, in Docket No. G-11034; and Cities Service's application was filed on September 10, 1956, in Docket No. G-11046. These applicants are collectively referred to as the CATCO companies. These proceedings were consolidated by order of the Federal Power Commission and were heard on a single record.

Concurrently, by application dated September 19, 1956, Tennessee applied for a Certificate of Public Convenience and Necessity pursuant to 15 U.S.C.A., Section 717f(c) for authority to institute construction of facilities to transport the gas from the offshore locations to the mainland. By order of the Commission issued April 22, 1957, as modified [fol. 645] by an order issued May 20, 1957, Tennessee was granted a temporary Certificate of Public Convenience and Necessity authorizing it to construct and operate such facilities, and pursuant to this certificate it has commenced construction of approximately 107 miles of pipe line from the offshore platforms of the CATCO companies to a point on Tennessee's main transmission line at Kinder, Louisiana.

Pursuant to notice issued February 8, 1957, hearings on the CATCO applications were held February 28, 1957, and concluded the following day. Intervention by various parties including the Petitioners herein was permitted by order of the Commission issued February 27, 1957. Subsequent to the decision of the Presiding Examiner issued March 29, 1957, and intermediate orders of the Commission issued on April 22, 1957, and May 20, 1957, these applications culminated in the Commission's order of June 24, 1957, which issued conditional certificates to each of the CATCO

companies. Each of the CATCO companies has complied with the conditions set forth in Paragraphs (B) and (C) of the order issued by the Commission on June 24, 1957. [fol. 646] Tidewater complied with the conditions by filing with the Commission within twenty (20) days after the issuance of said order an amendment to its contract with Tennessee and a corporate resolution authorizing such amendment. Petitioners' application for a rehearing of the June 24th order was denied by the Commission's order issued April 15, 1957.

The order from which the Petitioners appeal arose from proceedings before the Commission in which the Petitioners were intervenors in opposition to Tidewater's application for a Certificate of Public Convenience and Necessity. Tidewater was a party to said proceedings and presented evidence in support of its application for such certificate. In its Petition for Review the Petitioners, inter alia, pray that the Court:

> "Review the order issued June 24, 1957, by the Respondent, Federal Power Commission, as modified by the order issued August 15, 1957, and enter a judgment vacating and setting said order aside."

If the order issued by the Commission on June 24, 1957, is set aside as requested in that part of Petitioners' prayer set out above, there would be a substantial adverse effect upon Tidewater. Said order was issued "to insure that de- [fol. 647] liveries of gas by the four CATCO companies to Tennessee Gas will commence as promptly as possible." The CATCO companies have expended great sums in developing gas reserves underlying their offshore leases, and as indicated above, Tennessee is now constructing facilities for the transmission of this gas which are scheduled for completion by the end of this year. Under these circumstances, it is clear that Tidewater has a direct and immediate interest in any attempt to set aside the June 24, 1957, order and thereby prevent the sale and delivery of gas pursuant to such order. Tidewater's vital interest in this matter cannot be adequately protected unless it is allowed to intervene herein.

Prayer

Wherefore, premises considered, Tidewater moves and prays:

1. That it be authorized and permitted by this Court to intervene in this cause in opposition to Petitioners and in support of the validity and correctness of the action and orders of Respondent.

2. That in accordance with Rule 18(6), it be permitted [fol. 648] to participate in the designation of the record.

3. That it be permitted to file an answer to the Petition for Review within such time and upon such terms as this Court may designate.

4. That pursuant to the Rules of this Court, it be permitted to participate in the briefing, oral argument, and submission of this matter.

5. For such other orders or directions as this Court may deem proper in the premises.

Respectfully submitted,

Tidewater Oil Company, By: /s/ Gene M. Woodfin, Its Attorney.

Gene M. Woodfin, J. Evans Attwell, Niels Esperson Building, Houston 2, Texas.

Robert O. Koch, Tidewater Oil Company, P. O. Box 1404, Houston, Texas, Counsel for Intervenor.

[fol. 649] *Duly sworn to by Gene M. Woodfin, jurat omitted in printing.*

[fol. 650] Certificate of Service (omitted in printing).

[fol. 651] [File endorsement omitted]

[fol. 652]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF CONTINENTAL OIL COMPANY FOR LEAVE TO INTERVENE—Filed October 18, 1957

To the Honorable Judges of the United States Court of Appeals for the Third Circuit:

Comes Now Continental Oil Company (Continental), pursuant to Rule 18(6) of this Court, and files this Motion for Leave to Intervene in the above styled and numbered cause in opposition to the Petition for Review, to be made a party thereto in support of the Order sought to be reviewed, with the right to be heard upon briefs and oral argument and to otherwise participate fully as a party in this proceeding. The grounds for this Motion are as follows:

[fol. 653] 1.

Continental is a corporation duly organized and existing under the laws of the State of Delaware, with its principal office in Houston, Texas (such office being in the Texas National Bank Building, and its mailing address being Box 2197). Continental is engaged in the business of searching for, producing, refining, and selling oil and gas and their products. It is qualified to do business in each of the forty-eight states and in the District of Columbia. Continental is the "Continental Oil Company" referred to in the Petition for Review.

2.

On October 7, 1957, the Public Service Commission of the State of New York (Petitioner) filed a Petition for Review of the Order of the Federal Power Commission issued June 24, 1957, in consolidated Dockets No. G-11024, *In the Matter of Continental Oil Company,* No. G-11034, *In the Matter of The Atlantic Refining Company,* No. G-11046, *In the Matter of Cities Service Production Company,* and No. G-11049, *In the Matter of Tidewater Oil Company.*

3.

Continental is the principal party in Docket No. 11024, *In the Matter of Continental Oil Company,* which is one of the consolidated dockets which resulted in the Order from which Petitioner appeals, which Order authorized Con- [fol. 654] tinental to sell gas to Tennessee Gas Transmission Company from properties offshore the State of Louisiana in the Gulf of Mexico. This Order which is sought to be reviewed intimately concerns Continental, which is the only real respondent in interest insofar as the appeal concerns Docket No. G-11024, and the relief sought by Petitioner will, if granted, have a direct, substantial and adverse effect on Continental.

4.

Continental's interest may not be adequately represented by the Respondent herein. Continental proposes to show that there is no merit in the contentions of Petitioner, that Respondent's Order from which this appeal is taken is proper and in the public interest, and that the prices to be paid under the contract and of which the Petition for Review complains are the subject of rate investigations instituted by the Federal Power Commission in Docket G-9279, under the provisions of Section 5(a) of the Natural Gas Act, which investigations are being currently prosecuted by the Federal Power Commission and will adequately protect the public interest in all matters in regard to any prices to be paid or received in connection with the sale which is the subject matter of these proceedings.

[fol. 655] Wherefore, Continental prays for leave to intervene in opposition to the Petition for Review, to be made a party thereto in support of the Order sought to be reviewed, with the right to be heard upon briefs and oral argument and to otherwise participate fully as a party in this proceeding.

Respectfully submitted,

Continental Oil Company, /s/ Roland B. Voight, Original signed, By: Roland B. Voight, Its Attorney.

Mailing Address: Box 2197, Houston 1, Texas.

October 17, 1957.

[fol. 656] *Duly sworn to by Roland B. Voight, jurat omitted in printing.*

[fol. 657] Certificate of Service (omitted in printing).

[fol. 659] [File endorsement omitted]

[fol. 660]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12403

LONG ISLAND LIGHTING COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF CONTINENTAL OIL COMPANY FOR LEAVE TO INTERVENE—October 21, 1957

To the Honorable Judges of the United States Court of Appeals for the Third Circuit:

Comes Now Continental Oil Company (Continental), pursuant to Rule 18(6) of this Court, and files this Motion

for Leave to Intervene in the above styled and numbered cause in opposition to the Petition for Review, to be made a party thereto in support of the Order sought to be reviewed, with the right to be heard upon briefs and oral argument and to otherwise participate fully as a party in this proceeding. The grounds for this Motion are as follows:

[fol. 661]

1.

Continental is a corporation duly organized and existing under the laws of the State of Delaware, with its principal office in Houston, Texas (such office being in the Texas National Bank Building, and its mailing address being Box 2197). Continental is engaged in the business of searching for, producing, refining, and selling oil and gas and their products. It is qualified to do business in each of the forty-eight states and in the District of Columbia. Continental is the "Continental Oil Company" referred to in the Petition for Review.

2.

On October 11, 1957, Long Island Lighting Company and Public Service Electric and Gas Company (Petitioners) filed a Petition for Review of the Order of the Federal Power Commission issued June 24, 1957, in consolidated Dockets No. G-11024, *In the Matter of Continental Oil Company,* No. G-11034, *In the Matter of The Atlantic Refining Company,* No. G-11046, *In the Matter of Cities Service Production Company,* and No. G-11049, *In the Matter of Tidewater Oil Company.*

3.

Continental is the principal party in Docket No. 11024, *In the Matter of Continental Oil Company,* which is one of the consolidated dockets which resulted in the Order from which Petitioner appeals, which Order authorized [fol. 662] Continental to sell gas to Tennessee Gas Transmission Company from properties offshore the State of Louisiana in the Gulf of Mexico. This Order which is sought to be reviewed intimately concerns Continental,

which is the only real respondent in interest insofar as the appeal concerns Docket No. G-11024, and the relief sought by Petitioner will, if granted, have a direct, substantial and adverse effect on Continental.

4.

Continental's interest may not be adequately represented by the Respondent herein. Continental proposes to show that there is no merit in the contentions of Petitioner, that Respondent's Order from which this appeal is taken is proper and in the public interest, and that the prices to be paid under the contract and of which the Petition for Review complains are the subject of rate investigations instituted by the Federal Power Commission in Docket G-9279, under the provisions of Section 5(a) of the Natural Gas Act, which investigations are being currently prosecuted by the Federal Power Commission and will adequately protect the public interest in all matters in regard to any prices to be paid or received in connection with the sale which is the subject matter of these proceedings.

[fol. 663] Wherefore, Continental prays for leave to intervene in opposition to the Petition for Review, to be made a party thereto in support of the Order sought to be reviewed, with the right to be heard upon briefs and oral argument and to otherwise participate fully as a party in this proceeding.

Respectfully submitted,

Continental Oil Company, /s/ Roland B. Voight, Original signed, By: Roland B. Voight, Its Attorney.

Mailing Address: Box 2197, Houston 1, Texas.

October 21, 1957

[fol. 664] *Duly sworn to by Roland B. Voight, jurat omitted in printing.*

[fol. 665] Certificate of Service (omitted in printing).

[fol. 667] [File endorsement omitted]

[fol. 668]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

JOINT MOTION OF THE ATLANTIC REFINING COMPANY AND CITIES SERVICE PRODUCTION COMPANY FOR LEAVE TO INTERVENE—Filed October 18, 1957

To the United States Court of Appeals for the Third Circuit and the Honorable Judges Thereof:

The Atlantic Refining Company (Atlantic) and Cities Service Production Company (Cities Service) move this Honorable Court for leave to intervene in the above-entitled cause in opposition to the Petition for Review of an Order of the Federal Power Commission, dated June 24, 1957, filed by the Public Service Commission of the State of New York (Petitioner), said order having been issued by the Commission in proceedings before it, designated *In the Matters of Continental Oil Company,* Docket No. [fol. 669] G-11024; *The Atlantic Refining Company,* Docket No. G-11034; *Cities Service Production Company,* Docket No. G-11046; and *Tidewater Oil Company,* Docket No. G-11049. In support of this motion, Atlantic and Cities Service respectfully show as follows:

I

The Atlantic Refining Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office in Philadelphia, Pennsylvania, and its principal place of business with re-

spect to natural gas in Dallas, Texas. Cities Service Production Company is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in Bartlesville, Oklahoma.

II

Atlantic and Cities Service were parties to the proceedings before the Federal Power Commission which resulted in the aforesaid order of the Federal Power Commission issued June 24, 1957, of which review is here sought by Petitioner. In September 1956, Atlantic and Cities Service, together with Continental Oil Company and Tidewater Oil Company, herein collectively referred to as CATCO companies, filed applications for certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act,[1] requesting authority to sell gas [fol. 670] produced by them from certain leases situated off the coast of Louisiana to Tennessee Gas Transmission Company (Tennessee). Each of the four CATCO companies owns a one-fourth interest in gas leases located in the Gulf of Mexico off the coast of Louisiana in the East Cameron, West Cameron, and Vermilion areas. The leases total approximately 95,000 acres and contain reserves of approximately 1,673,929,000 Mcf. Atlantic and Cities Service, together with the other CATCO companies, own facilities such as platforms, wells, separators, and meters, for the purpose of production and delivery of gas from these leases.

Pursuant to contracts executed on August 10 and 14, 1956, respectively, the basic provisions of which are identical, Atlantic and Cities Service, each has agreed and is obligated to sell to Tennessee, at the off-shore platforms, 25% of 175,000 Mcf of natural gas per day, or 4/5ths of the total quantity which the wells are capable of producing, whichever is the lesser, until November 1, 1958. After that date, the contracts provide for the delivery of 1,000 Mcf per day for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves.

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[1] Act of June 21, 1938, Section 7, 52 Stat. 821, 824, as amended 56 Stat. 83, 15 U.S.C. 717f.

The initial price, pursuant to the contracts, is 21.4¢ per Mcf[2] until November 1, 1962. Thereafter, the contracts, as amended in accordance with the Commission's aforesaid [fol. 671] order of June 24, 1957, provide for increases in the rate to be charged to Tennessee up to 2¢ per Mcf for every 4-year period throughout the term of the contract.

Petitioner, by its Petition for Review, seeks to set aside the order by which the Federal Power Commission issued certificates of public convenience and necessity authorizing Atlantic and Cities Service to sell gas to Tennessee. In addition to setting aside authority to sell gas to Tennessee, the requested action would also result in abrogation of valuable contract rights of Atlantic and Cities Service resulting in irreparable injury to them. Loss of such contract rights would in turn threaten still further injury through jeopardizing the underlying leases of Atlantic and Cities Service.

III

It is, therefore, respectfully submitted that Atlantic and Cities Service have obvious direct and substantial interests in opposing the Petition for Review of the Public Service Commission of the State of New York in this proceeding.

IV

Atlantic and Cities Service seek to intervene in the above-entitled cause in support of the aforesaid order of the Federal Power Commission, dated June 24, 1957, to show that said order is lawful and proper in the public interest. [fol. 672]

V

Attorneys for Petitioner and Respondent have authorized Atlantic and Cities Service to state herein that they will not oppose the granting of intervention as here requested.

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[2] As applicable, a reimbursement for the Louisiana Gathering Tax of 1¢ per Mcf or its Federal equivalent would be added to this amount.

Wherefore, by reason of the foregoing, Atlantic and Cities Service move that they be granted leave to intervene as parties to this proceeding, and that they be permitted to file briefs, to participate in the designation of the record, to make oral argument, and have all other rights due to be accorded to them as parties.

Respectfully submitted,

The Atlantic Refining Company and Cities Service Production Company, By /s/ Bernard A. Foster, Jr., Ross, Marsh & Foster, Their Attorney.

October 17, 1957

[fol. 673] *Duly sworn to by Bernard A. Foster, Jr., jurat omitted in printing.*

[fol. 674] Certificate of Service (omitted in printing).

[fol. 675] [File endorsement omitted]

[fol. 676]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

JOINT MOTION OF THE ATLANTIC REFINING COMPANY AND CITIES SERVICE PRODUCTION COMPANY FOR LEAVE TO INTERVENE—Filed October 18, 1957

To the United States Court of Appeals for the Third Circuit and the Honorable Judges Thereof:

The Atlantic Refining Company (Atlantic) and Cities Service Production Company (Cities Service) move this

Honorable Court for leave to intervene in the above-entitled cause in opposition to the "Joint and Several Petition for Review of Decision and Order of the Federal Power Commission, dated June 24, 1957," filed by the Long Island Lighting Company and Public Service Electric and Gas Company (Petitioners), said order having been issued by the Commission in proceedings before it, designated *In the Matters of Continental Oil Company,* Docket No. G-11024; *The Atlantic Refining Company,* Docket No. G-[fol. 677] 11034; *Cities Service Production Company,* Docket No. G-11046; and *Tidewater Oil Company,* Docket No. G-11049. In support of this motion, Atlantic and Cities Service respectfully show as follows:

I

The Atlantic Refining Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office in Philadelphia, Pennsylvania, and its principal place of business with respect to natural gas in Dallas, Texas. Cities Service Production Company is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in Bartlesville, Oklahoma.

II

Atlantic and Cities Service were parties to the proceedings before the Federal Power Commission which resulted in the aforesaid order of the Federal Power Commission issued June 24, 1957, of which review is here sought by Petitioners. In September 1956, Atlantic and Cities Service, together with Continental Oil Company and Tidewater Oil Company, herein collectively referred to as CATCO companies, filed applications for certificates of public convenience and necessity, pursuant to Section 7 [fol. 678] of the Natural Gas Act,[1] requesting authority to sell gas produced by them from certain leases situated off the coast of Louisiana to Tennessee Gas Transmission

[1] Act of June 21, 1938, Section 7, 52 Stat. 821, 824, as amended, 56 Stat. 83, 15 USC 717f.

Company (Tennessee). Each of the four CATCO companies owns a one-fourth interest in gas leases located in the Gulf of Mexico off the coast of Louisiana in the East Cameron, West Cameron, and Vermilion areas. The leases total approximately 95,000 acres and contain reserves of approximately 1,673,929,000 Mcf. Atlantic and Cities Service, together with the other CATCO companies, own facilities such as platforms, wells, separators, and meters, for the purpose of production and delivery of gas from these leases.

Pursuant to contracts executed on August 10 and 14, 1956, respectively, the basic provisions of which are identical, Atlantic and Cities Service, each has agreed and is obligated to sell to Tennessee, at the off-shore platforms, 25% of 175,000 Mcf of natural gas per day, or 4/5ths of the total quantity which the wells are capable of producing, whichever is the lesser, until November 1, 1958. After that date, the contracts provide for the delivery of 1,000 Mcf per day for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves.

The initial price, pursuant to the contracts, is 21.4¢ per Mcf[2] until November 1, 1962. Thereafter, the contracts, as amended in accordance with the Commission's [fol. 679] aforesaid order of June 24, 1957, provide for increases in the rate to be charged to Tennessee up to 2¢ per Mcf for every 4-year period throughout the term of the contract.

Petitioners, by their Joint and Several Petition for Review, seek to set aside the order by which the Federal Power Commission issued certificates of public convenience and necessity authorizing Atlantic and Cities Service to sell gas to Tennessee. In addition to setting aside authority to sell gas to Tennessee, the requested action would also result in abrogation of valuable contract rights of Atlantic and Cities Service resulting in irreparable injury to them. Loss of such contract rights would in turn threaten still further injury through jeopardizing the underlying leases of Atlantic and Cities Service.

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[2] As applicable, a reimbursement for the Louisiana Gathering Tax of 1¢ per Mcf or its Federal equivalent would be added to this amount.

III

It is, therefore, respectfully submitted that Atlantic and Cities Service have obvious direct and substantial interests in opposing the Joint and Several Petition for Review of Long Island Lighting Company and Public Service Electric and Gas Company in this proceeding.

IV

Atlantic and Cities Service seek to intervene in the above-entitled cause in support of the aforesaid order of the Federal Power Commission, dated June 24, 1957, to show that said order is lawful and proper in the public interest. [fol. 680]

V

Attorneys for Petitioners and Respondent have authorized Atlantic and Cities Service to state herein that they will not oppose the granting of intervention as here requested.

Wherefore, by reason of the foregoing, Atlantic and Cities Service move that they be granted leave to intervene as parties to this proceeding, and that they be permitted to file briefs, to participate in the designation of the record, to make oral argument, and have such other rights due to be accorded to them as parties.

Respectfully submitted,

The Atlantic Refining Company and Cities Service Production Company, By /s/ Bernard A. Foster, Jr., Ross, Marsh & Foster, Their Attorney.

October 17, 1957

[fol. 681] *Duly sworn to by Bernard A. Foster, Jr., jurat omitted in printing.*

[fol. 682] Certificate of Service (omitted in printing).

[fol. 683] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

Present: Goodrich, Staley and Hastie, Circuit Judges

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE, ETC.—
October 22, 1957

Upon consideration of the motions by Tennessee Gas Transmission Company, Tidewater Oil Company, Continental Oil Company, and the joint motion by Atlantic Refining Company and Cities Service Production Company for leave to intervene in the above-entitled case; and there being no opposition to the motions;

It is Ordered that

1. Tennessee Gas Transmission Company,
2. Tidewater Oil Company,
3. Continental Oil Company,
4. Atlantic Refining Company and Cities Service Production Company

be, and they are hereby granted leave to intervene, to participate in the designation of record, to file briefs, and to participate in the oral argument.

By the Court, Herbert F. Goodrich, Circuit Judge.

October 22, 1957

[fol. 684] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

Present: Goodrich, Staley and Hastie, Circuit Judges.

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE, ETC.—
October 22, 1957

Upon consideration of the motions by Tidewater Oil Company, Tennessee Gas Transmission Company, Continental Oil Company, and the joint motion by Atlantic Refining Company and Cities Service Production Company for leave to intervene in the above-entitled case; and there being no opposition to the motions;

It is Ordered that

1. Tidewater Oil Company,
2. Tennessee Gas Transmission Company,
3. Continental Oil Company,
4. Atlantic Refining Company and Cities Service Production Company

be, and they are hereby granted leave to intervene, to participate in the designation of record, to file briefs, and to participate in the oral argument.

By the Court, Goodrich, Circuit Judge.

October 22, 1957

[fol. 685] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401
No. 12,403

PUBLIC SERVICE COMMISSION OF STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

LONG ISLAND LIGHTING COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

JOINT MOTION TO FIX DATES FOR FILING BRIEFS BEFORE CONSOLIDATED JOINT APPENDIX IS PRINTED; TO PROVIDE THE MODE OF CITATION TO THE RECORD IN THE BRIEFS; AND TO PROVIDE FOR THE PRINTING OF THE JOINT APPENDIX FOLLOWING THE DATES FIXED FOR FILING BRIEFS—Filed December 9, 1957

All parties to the above proceedings, involving two petitions to review a single order of the Federal Power Commission, move that this Court enter an order as follows:

I,

A. Fixing dates for filing briefs to be followed by a printed joint appendix, as follows:

(1) Petitioners' briefs to be served and filed not later than January 20, 1958.

(2) Respondent's brief to be served and filed not later than February 28, 1958.

(3) Petitioners' reply briefs to be served and filed not leter (sic) than March 17, 1958.

(4) Any intervenor permitted to intervene by the Court who objects to the order sought to be reviewed shall file at the same time as petitioner, and any intervenor who supports the order sought to be reviewed shall file at the same time as respondent.

[fol. 686] (5) Counsel for all parties to agree informally not later than March 1, 1958, upon portions of the single record to be printed as provided for in Rule 18(7) of this Court's rules.

(6) Petitioners to print or reproduce, in conformity with rules of this Court, a joint appendix containing portions of record agreed to be printed and filed not later than March 17, 1958.

B. Providing that in the briefs citations be made to the record as it has been certified to this Court (e.g., "R. 000"), instead of to the pages of the printed joint appendix and providing for printing or reproducing, otherwise, in accordance with the Rules, of the joint appendix as follows:

(1) The page numbers of the record as certified to this Court to be printed in bold-face type, interrupting the text type at the precise points where each new certified record page begins.

(2) Running heads to be printed in bold-face type at the outer top corner of each page of the joint appendix to indicate the first and last record pages, any part of which appears on the respective left and right page of each facing pair of joint appendix pages.

(3) The usual numerical pagination of the joint appendix to be printed in modern (i.e., light-face) type in the center of each printed record page, either at the bottom or the top.

II.

In support of this motion, the parties join in showing as follows:

A. Respondent has filed with the Clerk of this Court certified lists of all documents, transcripts of testimony,

exhibits and other material comprising the record in these proceedings adequately describing each and indicating its page numbers and has provided a pagination for all such material. The record certification in Nos. 12,401 and 12,403 are identical in all respects.

[fol. 687] B. Counsel for the parties hereto agree that they will designate for printing only such portions of the certified record as are cited in the briefs and are necessary for the Court to read in order to resolve controverted issues. They jointly and severally undertake to keep the size of the joint appendix to the minimum. In reaching agreement upon the portions of the record to be printed, counsel for petitioners shall designate from the citations in their briefs first; counsel for any intervenors objecting to the order under review shall then designate any additions from the citations in their briefs; counsel for respondent shall next designate any addition from its citations; and, lastly, any intervenors supporting the order under review shall designate any additions from their citations. Petitioners will pay for the printing of the portions of the record so designated and shall be entitled to reimbursement from other parties except the respondent, Federal Power Commission, for the costs of printing any additional designations made by counsel for such other parties, respectively. In the event of any disagreement over the reimbursement, the Court may, upon motion, resolve the controversy in accordance with the terms hereof, the applicable Rules of Court not in conflict herewith, and principles of law and equity.

C. Counsel for the parties believe and represent to the Court that the procedures herein sought will expedite the early disposition of this proceeding, will save the Court and all counsel substantial time, and will save printing and other expense.

D. Counsel for all parties seek to follow the practice of printing the joint appendix after all briefs have been filed, and thereby achieve the savings in time of counsel and in printing and other expenses made possible by that procedure, which counsel for the Federal Power Commission

represent, and counsel for the other parties hereto are informed and believe, are substantial. This procedure has [fol. 688] heretofore been followed with very satisfactory results in a large number of proceedings to which the Federal Power Commission has been a party, in this and other circuits. See e.g., Joint Motion of Parties To Fix Dates for Filing Briefs, etc., in *Phillips Petroleum Co.* v. *F.P.C.*, No. 5695, CA 3.

E. Counsel for each party hereby stipulate that if the procedure herein sought with respect to filing briefs and printing portions of the record is allowed, they will serve on counsel for each of the other parties six copies of their briefs and petitioners will furnish six copies of the record so printed to respondent and intervenors.

For the convenience of the Court there is submitted herewith a proposed form of order.

Respectfully submitted,

Kent H. Brown, Counsel for Petitioner, Public Service Commission of State of New York.

Edward S. Kirby, Counsel for Petitioner, Public Service Electric and Gas Company.

Howard E. Wahrenbroch, Counsel for Respondent, Federal Power Commission.

Gene M. Woodfin, Counsel for Intervenor, Tidewater Oil Company.

David K. Kadene, Edward M. Barret, Counsel for Petitioner, Long Island Lighting Co.

Harry S. Littman, Counsel for Intervenor, Tennessee Gas Transmission Company.

Roland B. Voight, Counsel for Intervenor, Continental Oil Company.

Bernard A. Foster, Jr., Counsel for Intervenor, Cities Service Production Company.

Bernard A. Foster, Jr., Counsel for Intervenor, Atlantic Refining Company.

[fol. 689] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401
No. 12,403

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

LONG ISLAND LIGHTING COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioner.

v.

FEDERAL POWER COMMISSION, Respondent.

FIXING DATES FOR FILING BRIEFS BEFORE CONSOLIDATED JOINT APPENDIX IS PRINTED, PRESCRIBING THE MODE OF CITATION TO THE RECORD IN THE BRIEFS, AND PROVIDING FOR PRINTING THE JOINT APPENDIX AFTER THE DATES FIXED FOR FILING BRIEFS.
—December 12, 1957

Upon consideration of the joint motion of all parties herein to fix dates for filing briefs before the record is printed, to prescribe the mode of citation to the record in the briefs, and to provide for printing or reproducing otherwise the joint appendix after the dates fixed for filing briefs, it is

Ordered by the Court as follows:

A. The dates for filing briefs and designating the parts of the record to be printed are set as follows:

(1) Petitioners' opening briefs shall be served and filed not later than January 20, 1958.

(2) Respondent's brief shall be served and filed not later than February 28, 1958.

(3) Petitioners' reply briefs shall be served and filed not later than March 17, 1958.

[fol. 690] (4) Any intervener who objects to the order sought to be reviewed shall file at the same time as petitioners and any intervener who supports the order shall file at the same time as respondent.

(5) Counsel for all parties shall agree informally not later than March 1, 1958, upon the portions of the record to be printed. In reaching agreement upon the portions of the record to be printed, counsel for petitioners shall designate from the citations in their briefs first; counsel for any interveners objecting to the order under review shall then designate any additions from the citations in their briefs; counsel for respondent shall next designate any addition from its citations; and, lastly, any interveners supporting the order under review shall designate any additions from their citations. Petitioners will pay for the printing of the portions of the record so designated and shall be entitled to reimbursement from other parties except the respondent, Federal Power Commission, for the costs of printing any additional designations made by counsel for such other parties, respectively. In the event of any disagreement over reimbursement, the Court, upon motion, may resolve the controversy in accordance with the terms hereof, the applicable Rules of Court not in conflict herewith, and principles of law and equity.

(6) Petitioners will print or reproduce in conformity with the rules of this Court a joint appendix containing the designated portions of the record, which will be filed not later than March 17, 1958.

[fol. 691] B. In the briefs citations shall be made to the record as certified to this Court (e.g., "R. 000") instead of to pages of the joint appendix. The portions of the record agreed upon shall be printed in accordance with the Rules, as follows:

(1) Page numbers of the record as certified to the Court shall be printed in bold-face type, interrupting the

text at the precise points where each new certified record page begins;

(2) Running heads shall be printed in bold-face type at the outer top corner of each page of the joint appendix to indicate the first and last record pages, any part of which appears on the respective left and right pages of each facing pair of printed record pages;

(3) The usual numerical pagination of the printed record shall be printed in modern (i.e., light-face) type in the center of each joint appendix page, either at the bottom or the top.

Per Curiam
William H. Hastie, Circuit Judge.

Dated: Dec. 12, 1957.

[fol. 692] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

ORDER—February 24, 1958

It is Ordered that the parties in the above-entitled case be, and they are hereby granted leave to omit from the joint appendix any orders which are included in the printed petition to review.

Maris, Circuit Judge.

February 24, 1958.

[fol. 693]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL POWER COMMISSION

Argued March 21, 1958

Before Kalodner, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed June 30, 1958

By STALEY, Circuit Judge.

Serious questions involving the authority of the Federal Power Commission are presented in these petitions to review an order of the Commission granting certificates of [fol. 694] public convenience and necessity pursuant to Section 7(e) of the Natural Gas Act, 15 U.S.C. § 717f(e).

Oil leases in the Gulf of Mexico off the shore of Cameron and Vermilion parishes in Louisiana are owned by four

independent producers of natural gas, Cities Service Production Company, The Atlantic Refining Company, Tidewater Oil Company, and Continental Oil Company. They are referred to collectively as the CATCO companies. In the early part of September, 1956, CATCO applied to the Federal Power Commission for certificates of public convenience and necessity for authority to sell their natural gas to Tennessee Gas Transmission Company, pursuant to contracts executed in August, 1956. Later in September, 1956, Tennessee Gas itself applied for a certificate of public convenience and necessity for authority to expand its facilities in preparation for the purchase of the gas from CATCO.

The contracts between the CATCO producers and Tennessee Gas provided for an initial rate of 22.4 cents per Mcf (including one cent gathering tax reimbursement), with an automatic increase of two cents every four years thereafter. The highest rate Tennessee Gas had previously paid for natural gas in the area was 18 cents per Mcf. The offshore gas fields in question represent the largest reserve ever committed to one sale, and the sale proposed is the first from the newly developed fields which will provide impressive proportions of future gas supply.

Hearings were begun on the CATCO applications on February 28, 1957. Petitioner Public Service Commission of the State of New York, which exercises general regulatory supervision over the gas industry in that state, intervened in the proceedings. An order of the respondent Commission permitted intervention also of four distributing company customers of Tennessee Gas, namely, Long Island Lighting Company, Public Service Electric and Gas Company, Brooklyn Union Gas Company, and Lake Shore Pipe Line Company. Tennessee Gas was the only intervenor in favor of the CATCO applications.

[fol. 695] In the latter part of March, 1957, the presiding examiner's decision ordered the issuance of certificates of public convenience and necessity to the CATCO applicants without conditions as to price, and conditioned only upon the issuance of a certificate to Tennessee Gas for the construction of its necessary facilities.

After exceptions were filed by intervenors, the respondent Commission issued its order of April 22, 1957. It directed the issuance of temporary certificates to the CATCO applicants, but remanded the proceedings to the examiner to determine what initial rates would accord with public convenience and necessity. After reviewing the circumstances which rendered this sale one of extreme importance both as to initial rate and as to the enormous volume of gas proposed to be sold, the Commission found:

> "Those factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest."

The CATCO applicants moved to modify that order, alleging that the economic risk involved would foreclose their acceptance of temporary certificates issued by the respondent Commission. Further, the applicants proposed to change their contracts so as to give the Commission continuing supervision of the proposed sale and future price increases regardless of any change Congress might make in the Natural Gas Act. The initial rate in the contract would stay at 22.4 cents per Mcf, however. No further evidence as to the reasonableness of the initial rate was presented.

The second order, issued May 20, 1957, demonstrated the Commission's desire to extend itself in an effort to be fair to the applicants while protecting the ultimate consumers from rates which might later be determined excessive. This order, however, still recognized that there [fol. 696] was insufficient evidence in the record on which to base a finding that public convenience and necessity required sale of the gas at the initial rate proposed. The plan embodied in the Commission's order was intended to permit the sale of the gas as soon as possible and was to be effectuated in the following manner. Without remanding the proceedings to the examiner, permanent certificates would be issued conditioned upon the initial rate of 18 cents (including the one cent gathering tax reimbursement). The CATCO companies would be entitled to file

for a rate increase to 22.4 cents per Mcf to be effective one day after the commencement of gas deliveries to Tennessee Gas.[1]

The Commission reasoned that the consumers would thereby not be relegated to the cumbersome and time-consuming procedure of a Section 5 proceeding where the burden would be on the Commission to show the rates unreasonable and where there are no provisions for refund in the event the Commission is able to meet its burden. The order, though unusual, was deemed necessary by the Commission to protect all parties concerned.

Still the CATCO applicants were not satisfied, and their dissatisfaction this time was expressed by Tennessee Gas in an application for rehearing filed June 4, 1957, which in part states:

> "Tennessee has been definitely advised by the producer-applicants that they will not amend Section 10 of the contract so as to change the initial rate from 21.4 cents per Mcf to 17 cents per Mcf. [The rates exclude the tax.] Tennessee has been further informed by the producer-applicants that the certificates issued [fol. 697] by said order will not be accepted by them for that reason, and that, accordingly, the contracts will be terminated. * * *"

A rehearing was held on June 12, 1957. No further evidence was added to the record. Counsel for the CATCO companies made it clear that unless CATCO received certificates not conditioned with initial rates they might deem objectionable, they would seek to dispose of their gas elsewhere than in the interstate market.

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[1] Under Section 4 of the Natural Gas Act, the Commission is empowered to suspend rate increases up to a period of five months, but it waived this power by its promise to the applicants to limit suspension to a 24-hour period. The net result would have been to permit the sale almost immediately at the initial rate proposed in the contracts, allow the CATCO applicants the opportunity of proving by Section 4 proceedings that the rate was just and reasonable, and protect the consumers of Tennessee Gas from overpayment by means of the refund provisions of Section 4 in the event CATCO could not meet its burden.

Impressed with this threat, the Commission issued its order of June 24, 1957, in which it granted permanent certificates of public convenience and necessity to the CATCO applicants without any condition affecting the initial price of 22.4 cents per Mcf as originally provided in the contracts with Tennessee Gas. Commissioner Connole dissented. It is this order which petitioners ask us to review.[2]

Tennessee Gas, CATCO, and the Commission argue that the petitioners have no standing to ask this court to review the order of June 24, 1957, because they are not "aggrieved" as required by Section 19(b) of the Act. Essentially, the petitioners represent the ultimate consumers of the gas. In Natural Gas Pipeline Company of America v. Federal Power Commission, 253 F.2d 3 (C.A.3, 1958), cert. pending, we held that a gas transmission company which has passed its increases on to its customers is "aggrieved," since as a matter of ethics and good business, it is required to protect its customers. Here the petitioners are more nearly representative of the ultimate consumers than was Natural Gas Pipeline Company in that case. Furthermore, when it is considered that New York distributors are sup- [fol. 698] plied by Tennessee Gas, that the contract price approved by the Commission's order is 4.4 cents higher than any other price paid by Tennessee Gas, that this is the first sale from new fields which will supply enormous quantities of gas in the future, and that the Commission's order in effect places the burden on the petitioners to show that the rates are unreasonable, it is clear the argument that petitioners are not "aggrieved" is without substance.

The suggestion that petitioners have not exhausted their administrative remedies is equally lacking in merit. The final order of the Commission granted unconditional certificates of public convenience and necessity. Rehearing

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[2] The petitioners pursuing their remedies in this court are Public Service Commission of the State of New York (No. 12,401), and Long Island Lighting Company and Public Service Electric and Gas Company (No. 12,403). Though these are separate petitions for review, we are disposing of both in one opinion. An order of this court issued October 22, 1957, permitted the CATCO companies and Tennessee Gas to intervene in support of the Commission's order under review.

has been denied. Judicial review is the next step, and the suggestion of unsatisfactory administrative remedies which are no remedies at all cannot displace this review.[3]

The petitioners pose substantially similar questions on the merits of the case, namely, whether the Commission committed error in its order of June 24 in dispensing with the consideration of the element of price because of the threat of the producers to withhold the gas from interstate commerce, after two previous determinations by the Commission that the sale should not be certified without evidence in the record that the initial rate was just and reasonable. We conceive of the question, however, as a more fundamental one, involving the statutory jurisdiction of the Federal Power Commission. It is whether the Commission has authority to consider an application for a certificate under Section 7(e) where the terms of the application limit the scope of the inquiry which the Commission is required to make for a determination of public convenience and necessity.

The Commission is empowered by Section 7(e) of the Natural Gas Act to attach reasonable conditions to its [fol. 699] issuance of certificates of public convenience and necessity.[4] One of the conditions the Commission often attaches is the stipulation of the initial rate. The legislative history of Section 7(e) indicates clearly that Congress intended to give the Commission full scope in scrutinizing the rate structure proposed in passing on the issuance of the certificate. Signal Oil and Gas Co. v. Federal Power Commission, 238 F.2d 771, 774, note 3 (C A.3, 1956), cert. denied, 353 U.S. 923 (1957). In the Signal Oil case, this court reaffirmed the statutory authority of the Commission to impose rate conditions where the public convenience and necessity required it. When the Signal Oil case was before the Commission, it said that

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[3] Proceedings under Section 5 of the Act foreclose any possibility of refund to the petitioners of amounts which later may be determined to be excessive.

[4] "• • • The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

the justness and reasonableness of the rate was a "vital element" in demonstrating "that the service proposed is or will be required by the present or future public convenience and necessity." Cities Service Gas Co., et al., 12 P.U.R. 3d 3, 14 (1955). According great weight to the initial rates proposed has been the policy of the Commission over the years as is indicated in its annual reports to Congress.[5]

While the Commission probably should always consider the impact of the proposed initial rate in its determination of public convenience and necessity, we do not reach the question of whether the Commission must fix the initial rate when its inquiry demonstrates that there is a substantial question of the reasonableness of that initial rate. See Oklahoma Natural Gas Co. v. Federal Power Commission, and the dissenting opinion of Judge Bazelon, — F.2d —, (C.A.D.C., decided May 22, 1958).

In the cases before us, the Commission has left no doubt of the importance and necessity of a consideration of the reasonableness of the proposed initial rate. In its first order issued April 22, 1957, the Commission said:

> [fol. 700] "The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be overemphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> "Those factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest."

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[5] See dissent of Judge Bazelon in Oklahoma Natural Gas Co. v. Federal Power Commission, —— F.2d ——, (C.A.D.C., May 22, 1958).

Again, in its order of May 20, 1957, the Commission said:

> "* * * As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. * * *"

It was only after the threat of withholding the gas from the interstate market that the Commission retreated from its previous position and granted the certificates without rate conditions by its order of June 24, 1957.[6] Commissioner Connole, in his dissent from this order, puts the problem into sharp focus:

> "The record is plain that the controlling reason the parties refuse to submit their contracts to regulatory review in the manner found to be necessary in the pub- [fol. 701] lic interest is their preference for a proceeding in which the burden would be on the Commission to establish that the rate was more than reasonable. They flatly refuse to submit to one in which the parties would be required to show only that the rate was required by the public convenience and necessity. No citation of authority or reference to regulatory theory is needed to demonstrate that the burden of showing the public convenience and necessity requires a proposed service at a particular price level is on the party seeking to take advantage of the proposed service and not on the tribunal before which the case is to be made. Under the unique conditions found here, the critical importance of that decision is indisputable."

The Commission defends its action by claiming the right to change its mind just as a court might do on rehear-

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[6] It is abundantly clear that the Commission changed its mind about the necessity of establishing that the proposed rate was in the public interest only because of the threat of the producers to withhold the gas from the interstate market unless they got certificates upon their own terms. The producers expressed themselves unequivocally through the application of Tennessee Gas for rehearing directed to the order of May 20, 1957, and further in oral argument at that rehearing.

ing, citing Cia Mexicana de Gas v. Federal Power Commission, 167 F.2d 804 (C.A.5, 1948). The petitioners, however, do not argue to the contrary. Their position is that, since in its first two orders the Commission determined that the record lacked sufficient evidence upon which to base a finding that the sale at the proposed rate would be in the public interest, and as the final order was based upon the same record, there is still insufficient evidence to support such a necessary finding.

The jurisdiction of the Federal Power Commission is entirely statutory. It acts as an arm of Congress, and only as Congress has directed it. It is empowered to grant certificates of public convenience and necessity by Section 7(e) of the Natural Gas Act.

> "Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition [fol. 702] covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. * * * "

The Act entrusts to the Commission, and to the Commission alone, the power and authority to determine the issue of public convenience and necessity. Within the framework of the Natural Gas Act, the Commission alone is entrusted with determining the scope of its inquiry necessary to arrive at the decision of whether to certificate a specific sale. It will be remembered that in its reports to Congress, the Commission has recognized that the element of price is important in determining whether a sale such as this should be approved, and as has been stated above,

both the statute and the courts have recognized the authority of the Commission not only to take price into consideration but to condition a certificate for the sale of gas at a particular rate. In the present case, that the initial rate was a necessary consideration in the scope of inquiry into the determination of public convenience and necessity has been twice recognized by the Commission, even to the extent that its order of May 20, 1957, in fact conditioned the permanent certificates upon a contract amendment as to the initial price.

The Commission has jurisdiction to issue certificates under Section 7(e) based upon its independent judgment after an untrammelled consideration of all the elements which it deems necessary to arrive at that judgment. Congress has not given the Commission power to inquire into the issue of public convenience and necessity where, as [fol. 703] here, the applicant circumscribes the scope of that inquiry by attaching a condition to its application requiring the Commission to forego the consideration of an element which may be necessary in the formulation of its judgment. Otherwise stated, the Commission has not been endowed by Congress with jurisdiction to conduct a *limited* inquiry.

Congress has also made it clear that the applicant must be *willing* to perform the services proposed and conform to the provisions of the Act. The action of the applicants in curtailing the decision-making power of the Commission demonstrates their unwillingness to conform to the provisions of the Act; this in itself would require the denial of the applications. The Commission's function is to regulate the sale of gas by producers willing to sell under regulations arrived at in accordance with the provisions of the Act. Such regulations may not be the result of bargaining with an unwilling seller.

The order of the Federal Power Commission of June 24, 1957, will be vacated, and the proceedings will be remanded to the Commission with directions to proceed in conformity with this opinion.

[fol.705] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

On Petition for Review of an Order of the Federal Power Commission

JUDGMENT—June 30, 1958

This cause came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of June 24, 1957 of the Federal Power Commission be, and it is hereby vacated, and the proceedings remanded to the Commission with directions to proceed in conformity with the opinion of this Court.

[fol. 706] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

Present: Kalodner, Staley and Hastie, Circuit Judges.

ORDER GRANTING MOTION OF INTERVENORS FOR ENLARGEMENT OF TIME FOR FILING PETITION FOR REHEARING—July 8, 1958

Upon consideration of the motion by the intervenors in the above-entitled cases, and there being no opposition to the motion;

It is Ordered that the time for filing a petition for rehearing be, and it is hereby extended to August 15, 1958.

By the Court,

/s/ Staley, Circuit Judge.

July 8, 1958

[fol. 707]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT,

ATTN HARRIET G HUMPHRYS = 2046 U S COURT HOUSE PHILA =

TENNESSEE GAS TRANSMISSION COMPANY IS AN INTERVENER IN 12401 and 12403, IN BEHALF OF RESPONDENT. WE RECEIVED COPY OF ORDER THIS MORNING EXTENDING TIME FOR FILING A PETITION FOR REHEARING TO AUGUST 15, 1958 WE ASSUME THE EXTENSION OF TIME IS ALSO APPLICABLE TO TENNESSEE. IF OUR ASSUMPTION IS INCORRECT, RESPECTFULLY REQUEST THAT THIS TELEGRAM BE CONSIDERED AS A REQUEST BY TENNESSEE FOR AN EXTENSION OF TIME UNTIL AUGUST 15, 1958 FOR FILING A PETITION FOR REHEARING. A COPY OF THIS TELEGRAM IS BEING MAILED TO ALL PARTIES =

HARRY S LITTMAN ATTORNEY FOR TENNESSEE GAS TRANSMISSION CO =

RECEIVED

12401 12403 15 1958 15 1958 July 10 1958

[fol. 708] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

Present: Kalodner, Staley and Hastie, Circuit Judges.

ORDER GRANTING MOTION OF RESPONDENT FOR ENLARGEMENT OF TIME FOR FILING PETITION FOR REHEARING—July 16, 1958

Upon consideration of the motion by the respondent in the above-entitled cases;

It is Ordered that the time for filing respondent's petition for rehearing be, and it is hereby extended to August 15, 1958.

By the Court,
/s/ Kalodner, Circuit Judge.

July 16, 1958

[fol. 709] Respondent's Petition for rehearing covering 13 pages filed July 22, 1958 omitted from this print.

It was denied, and nothing more by order: August 27, 1958.

[fol. 710] Producer-Intervenor's Petition for rehearing covering 22 pages filed August 14, 1958 omitted from this print.

It was denied, and nothing more by order: August 27, 1958.

[fol. 711] Intervenor's (Tennessee) Petition for rehearing covering 9 pages filed August 15, 1958 omitted from this print.

It was denied, and nothing more by order: August 27, 1958.

[fol. 712] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12401 and 12403

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, et al., Petitioners,

vs.

FEDERAL POWER COMMISSION, Respondent.

Present: Goodrich, Staley and Hastie, Circuit Judges

ORDER DENYING PETITIONS FOR REHEARING—August 27, 1958

After due consideration the petitions for rehearing in the above-entitled case are hereby denied.

By the Court, Staley, Circuit Judge.

Dated: August 27, 1958.

[fol. 713] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

No. 12,403

LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Petitioner,

vs.

FEDERAL POWER COMMISSION, Respondent.

ORDER STAYING MANDATE—September 2, 1958

Upon Application of the Atlantic Refining Company, Cities Service Production Company, Continental Oil Company, and Tidewater Oil Company, Intervenors in the above entitled causes, for a Stay of Execution of the Judgment and Mandate of the Court of Appeals for the Third Circuit submitted pursuant to Rule 36(2) of the rules of [fol. 714] this Court, to enable them to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States,

It is ordered that the Execution and Enforcement of said Judgment and Mandate of this Court in the above entitled cause, be and it hereby is stayed until the 2d day of October, 1958, to enable said Intervenors to apply

for and obtain a Writ of Certiorari from the Supreme Court of the United States.

Staley, Circuit Judge.

Dated: 9-2-58

[fol. 715] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 716]

SUPREME COURT OF THE UNITED STATES

Nos. 518 and 536, October Term, 1958

THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, CONTINENTAL OIL COMPANY, et al., Petitioners,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, et al.; and

TENNESSEE GAS TRANSMISSION COMPANY, Petitioner,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, et al.

ORDER ALLOWING CERTIORARI—January 12, 1959

The petitions herein for writs of certiorari to the United States Court of Appeals for the Third Circuit are granted. The cases are set for argument immediately following No. 288 and a total of three hours is allowed for oral argument of all of these cases.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of these applications.